Testimony of Edward J. Blum
Project on Fair Representation
American Enterprise Institute
Before the U.S. House of Representatives
Judiciary Committee
Subcommittee on the Constitution
October 25, 2005

Chairman Chabot, Representative Nadler, and distinguished committee members. Thank you for the honor and opportunity to testify before the committee today.

My name is Edward Blum and I am a Visiting Fellow at the American Enterprise Institute. I am also co-director at AEI with Commissioner Abigail Thernstrom of the Project on Fair Representation. In addition, we are co-authors of a forthcoming book on the evolution of the Voting Rights Act. Prior to my AEI affiliation, I have held a number of positions at other think tanks including the Center for Equal Opportunity, the American Civil Rights Institute, and the Campaign for a Color-Blind America, Legal Defense and Education Foundation. While at the Campaign, I directed the legal challenge to over a dozen racially gerrymandered voting districts in states from New York to Texas.

In anticipation of congressional hearings on the reauthorization of section 5 of the Voting Rights Act, the Project on Fair Representation at the American Enterprise Institute commissioned two social scientists to gather data on the state of minority participation in the election process in the jurisdictions covered by section 5 of the VRA, and, additionally, to compare and contrast those data with jurisdictions not covered by the act.

The authors of this study, Prof. Keith Gaddie of the Univ. of Oklahoma—who will be testifying to the committee this afternoon—and Prof. Charles Bullock of the Univ. of Georgia will present their completed findings by the end of 2005. For today's hearing Mr. Chairman, I respectfully offer the Committee their study of the state of Georgia. I ask it be placed in the record.

The Bullock-Gaddie study of Georgia, and the other state studies soon to follow, analyzes a handful of election criteria including but not limited to: black and Hispanic voter registration rates; black and Hispanic election turnout rates; success and failure of black and Hispanic candidates compared to the success and failure of white candidates; white cross-over support for minority candidates; and racial polarization levels using three different methodologies.

Although I have the hard data for only Georgia today, the preliminary analysis of the data indicates that the other section 5 states are more-or-less comparable. Here are some of the highlights of our findings:

1. Rates of black voter registration and participation at the polls currently exceed the rates for white voters in the state of Georgia and the nation as a whole.

2. Black and white candidates running as Democrats in Georgia draw comparable support from white voters irrespective of the candidate's race.

3. In the three most recent elections for which comparisons are available, Georgia black registration is approximately five percentage points higher than for non-southern blacks.

4. Estimates of racial voting patterns in Georgia congressional races held during the last fifteen years or so show African American candidates consistently polling thirty or more percent of the white vote and ninety or more percent of the black vote. Georgia has a total of 34 officials who are elected statewide. Nine of these officials are African American. All of these African-Americans have won statewide elections with substantial white support.

What can we conclude from these data? To quote from a recent law review article, "Bull Connor is dead." And so is every Jim Crow-era segregationist intent on keeping blacks from the polls.

In 1965, Congress was able to easily make a factual finding of rampant racial discrimination in the election arena aimed at blacks throughout the Deep South. By today however, the data simply do not support a similar finding. Furthermore, applying the same methods of analysis that we used on the covered jurisdictions to non-covered states such as Tennessee, Arkansas, and New Mexico and to subjurisdictions such as Queens County, New York and Volusia County, Florida among others reveals no differences between them.

Mr. Nadler noted last Thursday (Oct. 20, 2005) that the committee is attempting to build a record for the inevitable legal challenge to section 5. Building a record for reauthorization is different from building a rationale for reauthorization. The data we have analyzed are indisputable: the rates of minority participation and the success of minority candidates indicates that minorities in the covered jurisdictions no longer struggle against patterns of discrimination as they go about exercising their political rights. It is noteworthy that since 1998, the Department of Justice has brought nearly four times as many section 2 lawsuits against non-covered jurisdictions as against covered ones. Although some would note this may be due to section 5's power in the covered states, it also suggests that problems remain unaddressed outside of section 5's net. If the problems that remain are national in scope, then to focus on only particular jurisdictions makes no policy sense and aggravates federalism concerns. If the problems remain regional or remain only in even more widely scattered jurisdictions, then applying the statute's preclearance provisions where they are no longer justified also aggravates federalisms concerns. The data from Georgia simply don't justify the stringent and unique infringement on federalism principles that the Court recognized in beginning with *South Carolina v. Katzenbach* and continuing to *City of Boerne v. Flores*, and other cases. Additionally, Congress shouldn't renew section 5 based upon a fear that without it the covered jurisdictions would return to the practice of disenfranchising blacks and Hispanics. That fear is too speculative and cannot be substantiated by a congressional factual inquiry.

Some on the committee and various witnesses have argued that a felon, having paid his penalty to society, deserves the right to vote and be treated no differently from his fellow citizens. Yet, why shouldn't this principle apply to the covered jurisdictions? The forty-year penalty of section 5, completely justified in 1965, deserves to be lifted today. After all, Congress recognized in 1965 that section 5 was a temporary, emergency provision. It was to remain in effect for only five years. What more must a state like Georgia do in order to be treated no differently from other states?

The election data and federalism principles are not the only reasons for letting section 5 expire. There are other compelling good government reasons as well. During the last fifteen years, as judges, legislative bodies, and federal bureaucrats got in the habit of stretching the meaning of the VRA to reach any and all ends they considered desirable, the groundwork was laid for abuses. What started out as a tool to prevent anyone from being turned away at the ballot box because of skin color has turned into a means of second-guessing perfectly legitimate, nonracial policies.

The pinnacle of section 5 abuses occurred after the 1990 census and the cycle of redistricting that followed. The Department of Justice, aided by the old-line racial advocacy groups and some in the Republican Party, began to distort the VRA to require a "max-black" redistricting outcome. In other words, the preclearance provision of section 5 became a sword, rather than a shield, in the hands of government bureaucrats whose single-minded goal was not ending racial discrimination but guaranteeing racial and ethnic proportionality in every legislative body for which they had control. The result was the creation of dozens of racial gerrymanders—Rorschach-test-like bug splats--that systematically harvested blacks and Hispanics out of multiracial communities to form safe minority districts.

In a series of cases beginning with *Shaw v. Reno* and culminating in *Georgia v. Ashcroft*, the Supreme Court has marginally attempted to bring some sanity back to the law. In *Shaw*, the Court in 1993 found that a "reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who have little in common with another but the color of their skins, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group - regardless of their age, education, economic status, or the community in which they live - think alike, share the same political interests, and prefer the same candidates at the polls."

Ten years later, the Court found in *Georgia v. Ashcroft* that the retrogression standard that had been used by DOJ to force the strict maintenance of minority percentages in newly redrawn voting districts was wrong, noting that "the Voting Rights Act, as properly interpreted, should encourage the transition to a society where race no longer matters."

In my opinion, section 5 has degenerated into an unworkable, unfair, and unconstitutional mandate that is bad for our two political parties, bad for race relations, and bad for our body politic. Here are some of the reasons why Congress should consider letting section 5 should expire:

1. The emergency that precipitated the temporary provisions of section 5 has passed. Blacks throughout the covered jurisdictions register to vote and participate at the polls in numbers nearly identical to sometimes exceeding white voters.
2. The worst abuses of the Jim Crow era—such as poll taxes, literacy tests, and grandfather clauses—are permanently banned already. Moreover, any voter and the Department of Justice can challenge any discriminatory election policy or statute using section 2 of the act. It is permanent and applies to every state in the nation.
3. Section 5 has contributed to the ever-growing lack of election competitiveness, resulting in safe-seats-for-life for incumbents of both parties. Section 5 requirements are one of the key reasons a newly-created bipartisan, independent redistricting commission in Arizona was unable to fulfill its mandate to create competitive legislative and congressional districts. This in turn contributes to the creation of ideologically polarized voting districts.
4. Section 5 has evolved into a gerrymandering tool used by Democrats and Republicans to further their party's election prospects. It is nearly impossible today under section 5 to tease out racial electoral issues from partisan electoral issues, as we have recently witnessed in a handful of redistricting lawsuits from Texas to Boston.
5. Section 5 has had the effect of insulating white Republican officeholders from minority voters and issues specific to minority communities; and, in turn, it insulates minority elected officials from white voters.
6. Section 5 does not address in any way the long list of election issues that have surfaced during the last five years: hanging chads in Florida; long lines of voters in Ohio; too few poling places on college campuses in Wisconsin.

Mr. Chairman, Mr. Nadler, I look forward to providing the committee our full report later this year. Additionally, I wish to include in my written statement Chapter 1 from Abigail Thernstrom's seminal work, *Whose Votes Count? Affirmative Action and Minority Voting Rights* (Harvard University Press).

Thank you for allowing me to participate in these hearings.

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I am asking that Chapter 1 from Abigail Thernstrom's seminal work, *Whose Votes Count? Affirmative Action and Minority Voting Rights* (Harvard University Press) be included in the record accompanying my testimony because it illuminates the following points relevant to the question of reauthorizing the preclearance provision of the Voting Rights Act.

Executive Summary of Chapter 1
Whose Votes Count? Affirmative Action and Minority Voting Rights

- In 1966, in *South Carolina v. Katzenbach*, the Supreme Court signed off on extraordinary federal control over state and local electoral matters *only* because the entire act was meticulously designed for a clearly legitimate end—opening the polling booths to blacks in states with a record of egregious Fifteenth Amendment violations. Section 5 and other emergency provisions were passed, as Chief Justice Earl Warren said, in the context of the "unremitting and ingenious defiance of the Constitution." But, in recognition of their constitutionally questionable nature, these special provisions were expected to sunset in 1970.

- In 1965—hard as it is to believe today—the preclearance provision was barely discussed. Obstacles to registration and voting were the sole concern of those who framed the legislation. As Attorney General Katzenbach said at the congressional hearings, "The whole bill is really aimed at getting people registered." Every witness made that clear. And the point of preclearance was to reinforce the suspension of the literacy tests. Section 4 banned literacy tests in the covered jurisdictions—those southern states in which the emergency provisions applied. Section 5, preclearance, made sure the effect of that ban stuck. It was simply a prophylactic measure—a means of guarding against renewed efforts to keep blacks from the polls.

- The trigger that determined coverage by section 5 and other emergency provisions was devised to target precisely only those southern states known to have been deliberately depriving African Americans of their Fifteenth Amendment rights. The framers of the act took a well-established statistical relationship between literacy tests and low voter turnout in the South to identify intentional disfranchisement. They knew that most southern literacy tests were fake, and that turnout below the 50 percent mark in 1964 could serve as good circumstantial evidence of their fraudulent use to keep blacks from the polls. A less accurate trigger would have raised serious constitutional questions.

• In 1965 the statistical formula precisely identified states whose abominable records justified draconian federal action to ensure voting rights. But that statistical trigger was twice updated, and turnout figures for 1968 and 1972 were added to the formula for coverage. Moreover, the connection to the use of fraudulent literacy tests disappeared, since all tests were banned nationwide. As a result, scattered counties outside the South with no history of Fifteenth Amendment violations came under coverage. For this reason, among others, section 5 is no longer indisputably constitutionally sound.

• The initial understanding of section 5 envisioned objections only to innovations involving registration and the mechanics of voting, but as black registration rose sharply, state legislators in Mississippi and elsewhere acted swiftly to reduce the impact of the new black vote. They passed laws allowing counties to shift from single-member districts (some of which would elect black officeholders) to at-large voting, which would allow a cohesive white majority to defeat black candidates. In response, in *Allen v. State Board of Elections* (1969), the Supreme Court redefined disfranchisement to include vote dilution. Clearly, the Court could not stand by while southern whites in covered states altered electoral rules to buttress white hegemony. But *Allen* was the opening wedge in a profound transformation of the act.

• A right to protection from action intended to minimize black power, once established, could not be easily contained. By acting to avert such rearguard measures, by prohibiting the adoption of county-wide voting and other electoral changes that threatened to rob black ballots of their expected worth, the Court had implicitly enlarged the definition of enfranchisement. Now there were "meaningful" and "meaningless" votes—votes that counted and those that did not. And once that distinction had been made, a meaningful vote was almost bound to become an entitlement.

• An alleged voting rights violation today is a districting plan that contains nine majority black districts when a tenth could be drawn. The question is thus: how much special protection from white competition are black candidates entitled to? When do black ballots "fully count." The phrase, itself, invites a definition which gives those ballots maximum weight, defined as officeholding; anything less suggests a compromised right. Yet maximum weight implies an entitlement to proportionate ethnic and racial representation—a concept that is no less constitutionally controversial with respect to legislative bodies than with reference to schools and places of employment.

• We have arrived at a point no one could have envisioned in l965. The right to vote no longer means simply the right to enter a polling booth and pull the lever. Yet the issue retains a simply Fifteenth Amendment aura—an aura that is pure camouflage. But that camouflage cannot hide the fact that the emergency provisions of the Voting Rights Act, designed to enforce Fifteenth Amendment rights, no longer have the same indisputable constitutional legitimacy they once possessed—especially because administrative channels are so ill-equipped to resolve basic matters of electoral equality. The point is unlikely to escape judicial notice if plaintiffs challenge another twenty-five year extension of section 5.

Abigail Thernstrom

WHOSE VOTES COUNT?
Affirmative Action and Minority Voting Rights

(Harvard University Press, 1987)

CHAPTER ONE: THE FIRST FIVE YEARS
(footnotes omitted)

The Voting Rights Act of l965 had a simple aim: providing ballots for southern blacks. Within five years, in suits based on the statute, complex questions of electoral equality would arise, but certainly at the outset no one envisioned that turn of events. The extraordinary power which the legislation conferred on both courts and the Department of Justice, permitting an unprecedented intrusion of federal authority into local electoral affairs, was meant to deal with an extraordinary problem: continued black disfranchisement ninety-five years after the passage of the Fifteenth Amendment.

Judicial power would quickly come to be seen as a powerful tool to heighten the impact of the black vote. Yet, ironically, it was precisely the failure of courts to protect basic Fifteenth Amendment rights that prompted the passage of the Voting Rights Act. The l957 Civil Rights Act had created a Civil Rights Division within the Department of Justice, and had given federal authorities new power to sue recalcitrant registrars and other local officials determined to keep blacks from the polls. Both the l960 and l964 Civil Rights acts had further enhanced that power. But such case-by-case adjudication proved arduous, expensive, and limited in impact. Preparation for a trial often required examining of hundreds of witnesses and scouring thousands of pages of registration records. In one case involving Montgomery, Alabama, for instance, the government introduced sixty-nine exhibits, one of which consisted of l0,000 documents in five filing cabinets.

The government was invariable rewarded in its efforts, winning every suit it brought. But only those counties most vulnerable to attack were sued, and victory was often neither swift nor complete. As John Doar, in charge of voting rights litigation under John F. Kennedy, later put it, the Justice Department "faced tough judges" (some of whom Kennedy had, himself, appointed)—tough not in the sense of rigorous or exacting, he meant, but eager to find for the defendants. Too often, access to public records was reluctantly conceded, trials were delayed, cases improperly dismissed, rulings inadequate, and enforcement half-hearted. Kennedy's Justice Department initiated fifty-seven suits. The result, as Doar described it in l963, was to move "from no registration to token registration." He referred to areas targeted by federal activity. The primary concern was with the rural and small-town South—with, for instance, the twenty-two Alabama counties in which fewer than l0 percent of voting age blacks were registered, the four heavily black Louisiana parishes with not a single black on the voter lists, the sixty-nine Mississippi counties with abysmal records of receptivity to black political participation.

In such strongholds of white supremacy, the Justice Department did not battle alone. As government attorneys prepared their lengthy and elaborate legal briefs--combing the voter rolls, compiling the demographic statistics, interviewing registrars and registrants—valiant civil rights volunteers simply tried to register blacks to vote. As attorneys got ready to take legal action, workers went door to door urging blacks to exercise their Fifteenth Amendment rights.

The strength of these volunteers' effort was unprecedented, yet it largely failed. Or rather it failed to enlarge substantially the ranks of black registered voters, but succeeded, by the violence of the resistance that it provoked, in finally convincing the nation that radical new legislation was needed. Certainly as important to the enactment of the Voting Rights Act as the frustrating experience of federal litigators were the murders of three civil rights works in Mississippi in the summer of l964, the eruptions of violence in response to voter registration drives elsewhere, and the brutal assault by the police on the peaceful marchers from Selma to Montgomery, Alabama, in the spring of l965.

In the view of many blacks today, the Voting Rights Act is the crowning achievement of the civil rights movement. Yet in the early l960s, voter registration was not the highest priority for civil rights groups. The revolution instead got its start in the 1965 Montgomery bus boycott and the 1960 lunch counter sit-ins in Greensboro, North Carolina. The massive demonstration in Birmingham in l963 was in response to discrimination in the downtown department stores and, again, at the lunch counters. Not until the march at Selma did voting rights become the focus.

In fact, the energy devoted to voter registration drives after 1962 was due, in great part, to pressure from the Kennedy administration pressure and interest by philanthropic foundations. Following the Freedom Rides in the spring of 1961, which had attempted to force the desegregation of interstate transportation facilities, Attorney General Robert Kennedy had met with representatives from several civil rights groups to urge greater involvement on their part in voter registration work. Holding out the prospect of money from private sources, Kennedy argued that agitation for the vote was likely both to encounter less immediate white resistance and to promise greater long-run social change. It was the key to every other right, he contended. "From participation in elections [would] flow...all of what they wanted to accomplish in education, housing, jobs, and public accommodation."

Nevertheless, not everyone in the movement was convinced that the Kennedys meant well. Many members of the Student Nonviolent Coordinating Committee (SNCC) were skeptical. "I felt that what they were trying to do was to kill the Movement, but to kill it by rechanneling its energies," one SNCC worker reported. These warriors in the racial backwaters of the South wanted to revolutionize the social order, and voter registration seemed unequal to the task. As, historian Claybourne Carson has written, an important faction within SNCC hoped to "free people's minds from the restraints of established order," and to create a world in which people would "not even have to do such things as vote or have leaders or officers." Others, less ambitious in their goals, viewed the concentration on voter registration as a concession to the forces for law and order in the lawless Jim Crow South.

In the end, a majority in the movement was persuaded to follow the electoral politics strategy, and under the umbrella of a new organization, the Voter Education Project,, a massive registration drive was launched. Even the most militant quickly realized that such work was not a retreat—that it offered plenty of opportunity to confront southern racists directly. Soon after the June, l961 meeting at which Robert Kennedy had pressed civil rights organizers to place greater emphasis on enfranchisement, SNCC began a voter registration drive in McComb, Mississippi and surrounding counties. Led by Robert Moses, a black field secretary who had quit his job as a private-school mathematics teacher in New York to work full time on voter registration in the South, the registration effort proved enlightening. Between the middle of August and the end of October, Moses was attacked and beaten by a cousin of the sheriff; a co-worker was ordered out of a registrar's office at gunpoint and then hit with a pistol; a sympathetic black was murdered by a state representative; another black who asked for Justice Department protection to testify at the inquest was beaten (and three years later killed); a white activist's eye was gouged; and, finally, twelve SNCC workers and local supporters were fined and sentenced to substantial terms in jail. Those in McComb that summer discovered that voter registration work certainly signified no surrender, and gave those eager to display their courage ample opportunity. As one participant, answering those still agitating for the direct action such as sit-ins represented, "If you went into Mississippi and talked about voter registration they're going to hit you on the side of the head and that's about as direct as you can get."

Of course the walls of segregation and discrimination were not going to come tumbling down simply because blacks could vote, as Kennedy and King had hoped. But enfranchisement did portend massive change; southern whites who had so carefully erected and guarded the barriers to suffrage had always understood that. "Right or wrong, we don't aim to let them vote. We just don't aim to let 'em vote," a Mississippi Democrat told V.O. Key in the mid-l940s. It was a matter not of principle but of power. As Maynard Jackson, Atlanta's first black mayor, recently remarked, the Talmadges, the Stennises, the Bilbos, the Thurmonds all knew that once blacks got their Fifteenth Amendment rights no white supremacist would hold office securely.

This, then, was the context in which the march at Selma took place and the Voting Rights Act soon after was passed. The civil rights community had become more or less united in making black enfranchisement its highest priority, and that determination could only have been strengthened by the passage of the Civil Rights Act of l964. That measure provided extensive protection against discrimination in the areas of public accommodation, employment, and education, but it left basic voting rights—elementary access to the ballot—at the mercy of local courts. The limited receptivity of many southern judges to voting rights suits was clear, yet civil rights activists could do little on their own; the voter registration drives had had no more impact than the litigation. Progress had been meager; change, incremental. Federal help was obviously needed, but in a new form. And that is precisely what the Voting Rights Act provided.

Lyndon Johnson, in l965, called for the "goddamnedest, toughest, voting rights bill" that his staff could devise. And he got it. Critics and supporters alike agreed that it was "radical." A l972 report calling for more rigorous voting rights enforcement described the act's provisions as "harsh," but necessarily so. Its remedies were characterized as "stringent" by the Supreme Court, and the assistant attorney general for civil rights readily acknowledged in 1975 that it was "unusual" legislation.

The "usual" legislation, however, had failed to break the usual pattern of black disfranchisement. Voting rights litigators in the South in the early l960s had learned several lessons. The first concerned the literacy test. "No matter from what direction one looks at it," V.O. Key had written in l949, "the Southern literacy test is a fraud and nothing more." It was no less a fraud in l965. In the l960s, southern registrars were observed testing black applicants on such matters as the number of bubbles in a soap bar, the news contained in a copy of the *Peking Daily,* the meaning of obscure passages in state constitutions, and the definition of such terms as habeas corpus. By contrast, even illiterate whites were being registered. Booker T. Washington had believed that "brains, property, and character" would "settle the question of civil rights," but eighty years after the founding of Tuskegee Institute blacks with brains, property, and character in the city of Tuskegee still found themselves unable to demonstrate their literacy. "If a fella makes a mistake on his questionnaire, I'm not gonna discriminate in his favor just because he's got a Ph.D.," the chairman of the Board of Registrars righteously maintained.

Government attorneys trying voting rights cases in federal district courts had struggled with the question of a proper remedy for the discriminatory use of literacy tests. One option was to insist upon the fair administration of such tests: *all* illiterate applicants (black and white) would fail, and all those who could read and write would pass. Yet often these tests could not be objectively scored. For example, potential registrants would be asked to interpret a provision in the state constitution to the satisfaction of the registrar, when no definition of "satisfactory" had been—or could be—provided. In any case, the consequence of suddenly administering a test to blacks that whites had never been asked to take was unacceptable.

The alternative to permitting a color-blind literacy and "understanding" test was what attorneys called a true "freeze" order: do not freeze the announced registration test, they said, but the one to which whites had been actually subjected. That is, no change should be allowed in the real test that whites took. Since no literacy test had, in fact, been used to screen whites, none should be used for blacks. This, then, was the first conclusion dictated by trial experience in the early l960s: to eliminate the literacy test entirely was the proper remedy for its misuse.

Federal attorneys drew three further lessons. First, southern judges could not be trusted; federal district courts in the immediate locality were not the appropriate agency to enforce voting rights. Second, questions of disfranchisement should not, in fact, be litigated at all. To prove the obvious was both expensive and time-consuming, and victories were too often transient or incomplete. Finally, banishing literacy tests might not be enough. Unless preventative steps were taken, old methods of disfranchisement might simply be replaced by new ones, and the tedious and prolonged legal process would begin again.

These were the lessons that shaped the Voting Rights Act—that made it the "tough" legislation that President Johnson wanted. What the litigators learned in the field, the framers of the act wrote into law. In place of the extended and complex judicial process traditionally used to establish violations of voting rights, the architects of the statute substituted a simple statistical rule of thumb. They required no judicial findings. Instead, knowing literacy tests to be the chief means of disfranchising southern blacks, and using voter registration and turnout figures, they devised a statistical test to identify the discriminatory use of such tests. They took well-established relationship between the impact of black disfranchisement on the general level of political participation in the heavily black southern states, on the one hand, and the fraudulent use of literacy tests, on the other, and used the first to identify the second. The statistical test permitted the finding of vote denial by a simple formula, eliminating the need to ferret out Fifteenth Amendment violations in an unmanageably large number of counties in states with abominable records with respect to black voting rights.

The statute thus identified a voting rights violation wherever total voter registration or turnout in the presidential election of l964 fell below 50 percent and a literacy test was used to screen potential registrants. A state or county which had employed such a test in November l964, and in which less than half the voting-age population (black *and* white) had cast ballots, was assumed to have engaged in electoral discrimination, with the burden on the jurisdiction to prove otherwise.

From the inferred presence of constitutional violations, several consequences followed. In "covered" jurisdictions, literacy tests were suspended, initially for five years. Federal registrars ("examiners") and election observers could be dispatched to those areas whenever necessary. Moreover, those states and counties could institute no new "voting qualification or prerequisite to voting" without "preclearance" (approval) by the Attorney General or the District Court of the District of Columbia. No southern court was given jurisdiction. As the chairman of the House Judiciary Committee later put it, the law provided "an arsenal of readily available and effective remedies."

Why the figure of 50 percent? Because those who wrote the legislation knew the states they wanted to "cover" and, by a process of trial and error, determined the participation level that would single them out. Those central, temporary provisions of the l965 Act—suspension of the literacy test, chief among them—applied to six southern states in their entirety, a seventh in substantial part, and only scattered counties elsewhere. And why not a outright ban on all literacy tests, without the intervening, indirect test for Fifteenth Amendment violations? Because it was assumed that such a ban would not survive a constitutional challenge. As recently as l959, the right of states to screen potential registrants for their ability to read and write had, in principle, been upheld.

The impact of the act's passage was almost instantaneous. The history of Dallas County, Alabama, of which Selma is the seat, is illustrative. Prior to the bloody days of early 1965, when blacks and whites risked their lives marching for voting rights, the Justice Department had engaged in four years of litigation. Twice the federal court had found widespread Fifteenth Amendment violations, and at first glance it might seem that unmistakable progress had resulted: black registration had increased twenty-fold, from l6 to 383. But there were approximately *fifteen thousand* blacks of voting age in that majority-black county. On August 6 the Voting Rights Act became law, and by August 14 a federal examiner (registrar) had listed another 381 blacks. The effort of four years had been duplicated in a single week. By November nearly 8000 black applicants had been enrolled. In Alabama as a whole an estimated 19.3 percent of blacks were registered as of March, l965; the figure rose to 51.6 percent by September, l967. Impressive change also took place in Georgia, Louisiana, South Carolina, and Virginia. North Carolina, which began with relatively high black registration (46.8 percent), naturally experienced fewer gains. At the other extreme, Mississippi took off from a low point of 6.7 percent, but two years later had the highest percentage of black registered voters (59.8 percent) anywhere in the South.

What the Voting Rights Act accomplished—black enfranchisement—was precisely what it aimed to do. Every section of the statute must be viewed in light of that purpose. Attorney General Katzenbach made that goal very clear on the opening day of the congressional hearings held prior to the passage of the legislation. "Our concern today is to enlarge representative government," he said. "It is to increase the number of citizens who can vote." The point was reiterated throughout his testimony. "The whole bill is really aimed at getting people registered," he explained. Other witnesses did not even mention the purpose of the bill, viewing it as obvious and beyond discussion. Instead, they poured forth in detail the continuing obstacles to rudimentary electoral participation. Every advocate had the same thing in mind—realizing the promise of the Fifteenth Amendment almost one hundred years after its passage.

Although the Voting Rights Act was permanent legislation, its central provisions were temporary. For instance, the statute permanently protected all citizens from procedures which denied the right to vote on account of race or color (the Fifteenth Amendment guarantee). On the other hand, those sections that banned literacy tests, required the "preclearance" of every new "voting qualification or prerequisite to voting," and made available federal examiners and observers were enacted as short-term, "emergency" measures. Assuming powers traditionally left in local hands, these provisions consequently had an expected life of only five years. Indeed, had the "special" provisions also been proposed on a permanent basis, the law would not have passed. As it was, sponsors of the bill had originally hoped for a decade, but were forced to settle for half.

In l965, that is, ten years seemed an unacceptably long time to permit such extraordinary federal control in much of the South over matters of suffrage. The powers given to the Justice Department—which later became much greater than anyone originally contemplated—have become so much a part of our political and legal landscape that it is hard to recognize how remarkable they are. It was clear enough at the time, however. In a l966 decision upholding the law, Supreme Court Chief Justice Earl Warren acknowledged that its "constitutional propriety" had to be understood in context, "with reference to the historical experience which it reflect[ed]...[the] insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution." As it was, the doubts of the great liberal Justice, Hugo Black, were not assuaged. "Section 5 [the preclearance provision]," he said, "by providing that some of the States cannot pass State laws or adopt State constitutional amendments without first being compelled to beg federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between State and Federal power almost meaningless."

Justice Black was not alone, of course, in finding portions of the act objectionable. In fact, most Republican members of the House Judiciary Committee had preferred an alternative bill. They complained that "fair and effective enforcement of the 15th amendment call[ed] for precise identification of offenders, not the indiscriminate scatter-gun technique evidenced in the 50 percent test." That test, they said, "would engulf whole States in a tidal wave of Federal control of the election process, even though many of the counties or parishes within that State may be acknowledged by all to be absolutely free of racial discrimination in voting," they said.

These Republican views were shared by the *Wall Street Journal*. "To play with complicated formulas, to measure justice by percentages, and to aim punitive laws at some States," it said, "not only violates both the spirit and letter of the Constitution, but buries the real moral question in sophistry."

Southerners, of course, saw the ghost of Reconstruction. They, too, labeled the act punitive legislation, aimed at the South, without regard for the guilt or innocence of particular localities. Representative William M. Tuck from Virginia argued that not even the U.S. Commission on Civil Rights had found discrimination in his state. Yet Virginia, along with Mississippi, was required "to prostrate itself before a three-judge court in a foreign jurisdiction and establish its innocence." The reference was to the "bailout" provision, whereby jurisdictions could escape "coverage" by obtaining from the D. C. district court a declaratory judgment that in the previous five years the literacy test they had used had not actually been employed to deny or abridge the right to vote on account of race. "Do you think it is a fair system of justice which compels people to travel 250 or l,000 or 3,000 miles in order to gain access to a court of justice,?" Senator Sam Ervin asked in the Senate hearings prior to the passage of the act. It was a "studied insult" to the people and the "honorable judges" of the South, Tuck agreed, made even worse by the permission given to "Federal personnel to overrun areas of a State or subdivision as intimidating symbols of Federal power."

The charges were not persuasive. The act was a blunt and harsh instrument, but in l965 the South was in no position to protest its passage. It came to the argument with exceedingly dirty hands. And all attempts to secure Fifteenth Amendment rights by more orthodox means had failed. In retrospect, the most notable aspect of the debate is not the South's predicament—having the weight of constitutional tradition on its side, yet being so clearly in the wrong. Most striking is the fact that critics ignored the one provision that should have caused alarm and focused entirely on those that would soon gain wide acceptance. The elimination of the literacy test throughout most of the South, the provision for federal examiners and observers, and, to a lesser extent, the exclusive reliance on the D.C. district court—these provisions, so controversial in l965, were hardly matters of discussion five years later. Only a few Southerners (Senators Ervin and Thurmond, most notably) continued to resent their applicability to the South alone. But the "preclearance" requirement that quickly came to occupy center stage—the demand that covered jurisdictions check with federal authorities before altering any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting"—was hardly noticed in the initial debate.

The reason is clear. In l965, the preclearance provision (section 5) was seen as nothing more than a corollary of section 4—the latter banning literacy tests, the former making sure that the effect of that ban stuck. The demand that federal authorities preclear any new voting procedure in counties and states in which literacy tests had been suspended had an unambiguous and limited aim: guarding against renewed disfranchisement, the use of the back door once the front one was blocked.

The ingenuity of racists had kept the litigators attempting to secure the basic franchise always running and always behind, and those who shaped the Voting Rights Act could not be sure that eliminating the literacy test would do the trick. Although federal examiners could be assigned to register blacks where local officials were recalcitrant, it was hoped that the use of such registrars could be kept to a minimum. In any case, new regulations could keep blacks from actually voting. Of course, such regulation could be overturned judicially, but when whole purpose of the act was too eliminate the need for an army of federal litigators doing battle in every southern district court.

References to section 5, the preclearance provision, were sparse in the l965 congressional hearings, but Attorney General Katzenbach did briefly explain it. "Our experience in the areas that would be covered by this bill," he said, "has been such as to indicate frequently on the part of state legislatures a desire in a sense to outguess the courts of the United States or even to outguess the Congress of the United States." That is, the courts and Congress could ban familiar disfranchising devices only to confront novel ones devised by southern states bent on evading the law. But for such changes in voting procedure to be rejected, Katzenbach went on, they would have to have the effect of denying the rights guaranteed by the Fifteenth Amendment. And numerous witnesses at the hearings reassured their audience that those rights, which it was the entire purpose of the act to secure, were expected to be narrowly defined.

Thus Roy Wilkins, executive director of the NAACP, spoke of the need to protect the citizen "from the beginning of the registration process until his vote has been cast and counted." New York Representative William F. Ryan referred to the Act as "eliminating discrimination at the ballot box." Another New York congressman, Jonathan Bingham, urged legislation that would reach "every essential activity affecting the vote"--political party meetings, councils, conventions, and referendums, as well as primaries and general elections. Never during the hearings was "every essential activity affecting the vote" defined to include redistricting, annexations, or changes to at-large voting. No one could imagine he future scrutiny to which such changes would be subjected under section 5.

Two points, then, emerged from the House and Senate Judiciary Committee hearings on the original Voting Rights Act. First, preclearance was just one of several measures intended to reinforce the ban on literacy tests contained in section 4; second, as such, it was seen as relatively unimportant, drawing little attention. The Senate Committee report, in fact, fails even to mention section 5 in its summary of the bill’s key provisions, and the House Report gives it only a cursory and unilluminating glance. As the distinguished civil rights attorney Joseph Rauh put it, the provision was included in the statute "to stop ways around voting legislation...simply [as] self-defense." Congress was well aware that southern states were adept at the fine art of circumvention. Banishing literacy tests, it was feared, might not be sufficient; new devices could be created with the same impact as old ones, and the vote could be blocked anew.

The initial understanding of section 5 thus envisioned objections only to innovations involving registration and the mechanics of voting. Quite suddenly, however, a much broader view emerged—one that allowed the Department of Justice to review annexations, new district lines, and other changes affecting minority voting strength. The turning point can be precisely dated—March 3, 1969, when the Supreme Court handed down its decision in *Allen v. Board of*

Elections. Before *Allen* one district court opinion had suggested that, under section 5, extending the terms of office for white incumbents was a change that required federal approval. And South Carolina, most consistently, did submit some preclearance requests for newly drawn district and municipal boundaries, as well as for newly instituted at-large and other methods of voting. But these legislative initiatives had never met with any objection from the Department of Justice.

The picture changed overnight. Within three months of the decision in *Allen*— by the time Congress began hearings on the first extension of the act's temporary provisions—the central importance of section 5 was well established. Preclearance protected blacks not only against obvious disfranchising devices, but also against those which in more subtle ways "diluted" the impact of their vote.

Allen was actually a consolidation of four cases. The most important involved a l966 amendment to Mississippi law that allowed counties to replace district with at-large voting in the election of local supervisors (commissioners). Were such amendments voting "practices" or "procedures" and, as such, subject to the preclearance requirement of section 5?

Given the magnitude of the question, Chief Justice Warren disposed of it with striking ease. "The Voting Rights Act was aimed," he said, "at the subtle, as well as the obvious, state regulations which would have the effect of denying citizens their right to vote because of race." In the l965 hearings the assistant attorney general for civil rights had flatly stated that "the problem that the bill was aimed at was the problem of registration." In Chief Justice Warren's view, however, more important were statements such as, "There are an awful lot of things that could be started for purposes of evading the l5th amendment if there is a desire to do so." The reference to an "awful lot of things," the Chief Justice argued, was incompatible with a narrow definition of voting practices and procedures. And it was clear, he went on, "that the right to vote can be affected by a *dilution* of voting power as well as by an absolute prohibition on casting a ballot. Voters who are members of a racial minority might well be in the majority in one district, but in a decided minority in the county as a whole. This type of change could therefore nullify their ability to elect the candidate of their choice just as would prohibiting some of them from voting."

Chief Justice Warren's reading of legislative history showed considerable ingenuity; the hearings nowhere betray any concern with changes which affected not access to the ballot, but the weight of the ballots cast. Nonetheless his central point, though considerably overstated, did have merit. The adoption of at-large voting did not necessarily "nullify" the ability of black voters "to elect the candidate of their choice; rarely would county-wide or city-wide elections have the *same* impact as a fraudulent literacy test—leaving blacks disfranchised despite their access to the polling booth. But they might. The setting would have to be one in which white voters consistently voted as a bloc against candidates (white or black) preferred by blacks. Elections would then amount to a racial census, with the result that blacks in a majority-white jurisdiction would have nothing to lose by remaining home on election day. The breakdown of registrants by race would determine the outcome. But such white solidarity in the face of black enfranchisement is seldom permanent; blacks become a powerful swing vote when white candidates begin to compete. A substantial black electorate in an at-large setting is unlikely to remain indefinitely without influence—truly without reason to register and vote.

Yet the indefinite future was clearly not of immediate concern to Mississippi legislators in l966. As the number of registered blacks climbed sharply, state representatives had acted swiftly to amend state law to reduce the impact of the new voters. According to the U.S. Commission on Civil Rights, in 1966 at least thirty bills were introduced in regular and special legislative sessions, and twelve were passed introducing substantial alterations in the state's election laws. Among them was the bill at the heart of *Allen,* giving county boards of supervisors the option of providing for the at-large election of their members. The bill had been sponsored almost entirely by representatives who came from counties with either potential black majorities or at least one majority black district. In theory, of course, in counties where blacks were a majority, county-wide voting could enable them to make a sweep of legislative seats. But the whites who initiated the legislative move were counting on a poor black turnout (and thus a white majority) and bloc voting along racial lines to ensure white control for some time to come.

In an eloquent dissent in *Allen*, Justice Harlan argued that section 5 could only be interpreted to reach such ill-disguised, racially biased action if sections 4 and 5 were viewed as independent provisions. Enfranchisement, the majority opinion implied, had one meaning in one section, another in the other. Section 4 did not ban procedures which "diluted" the black vote, only those which kept blacks from the polls. Yet after *Allen* federal authorities under section 5 could prohibit the *introduction* of new methods of voting (such as at-large elections), although those same methods were not considered disfranchising by the definition contained in section 4.

The two provisions, Justice Harlan wrote, were "clearly designed to march in lock-step...." The purpose of preclearance (section 5) was not "to implement new substantive policies but...to assure the effectiveness of the dramatic step that Congress had taken in § 4." Enforcement and reinforcement--these were the inseparable goals of the two, interlocked provisions. Thus, when the need for section 4 expired, when the ban on literacy tests terminated, the protection provided by section 5 should also end. "As soon as a State regains the right to apply a literacy test or similar 'device' under § 4, it also escapes the commands of § 5."

Harlan's basic point is incontrovertible: as a result of *Allen* these two provisions, envisioned as inseparable, were now separated by distinct definitions of enfranchisement. Yet, Mississippi had unmistakably attempted to avert a likely consequence of black enfranchisement in existing majority-black single-member districts: the transfer of some public offices from white hands to black. Basic enfranchisement had been the sole goal of the statute, but confronted with such a bald maneuver, the Court could hardly refuse to act. Section 5, the preclearance provision, had been envisioned as a prophylactic device to prevent backsliding, and Mississippi had clearly tried to pull blacks back from the gains they had made.

Nevertheless, *Allen* marked a radical change in the meaning of the act: the majority opinion had found a Fourteenth Amendment right to protection from vote dilution in a statute that rested unequivocally on the Fifteenth Amendment. As Justice Harlan pointed out, and Chief Justice Warren acknowledged, the decision in *Allen* adopted "the reapportionment cases' expansive concept of voting...." It adopted, that is, that concern with the *weight* of the ballots cast that was at the heart of the one-person, one-vote (Fourteenth Amendment) decisions. Thus the door was opened to unprecedented federal involvement in local electoral matters. The reach of federal authority had been quite restricted as long as its limit was set by the boundaries of section 4. New election procedures not already prohibited by section 4, but nevertheless violating basic Fifteenth Amendment rights, could not be instituted. This had initially been the power of federal authorities under section 5 in its entirely: to block the introduction of new devices that kept blacks from the polls, and to require continued adherence to pre-existing rules—in other words, to force a return to abandoned procedures.

That power was greatly expanded by *Allen*. As I suggested I the Introduction, if there were now votes that "counted," and those that did not, then the former had obviously become a right: blacks casting "meaningless" ballots were certainly entitled to relief. But when were ballots "meaningful"? *Allen* forced an answer. For instance, proposed districting plans and annexations, for instance—both "voting" procedures, and, as such, subject to preclearance—cannot simply be vetoed by federal authorities. If the C.C. court (or the Department of Justice as its surrogate) objects to redistricting in the wake of a decennial census, the jurisdiction cannot in response simply reinstate the earlier, now malapportioned plan. New districts that conform to the one-person, one-vote standard must be devised. And federal authorities must define racial equity—the point at which black ballots “fully” count.

Likewise, an annexation may be judged discriminatory in impact if more white voters than black have been added to the city rolls. Yet neither the D.C. court nor the Supreme Court on appeal has sanctioned forcing financially squeezed cities to return to their circumscribed, preannexation boundaries. An alternative remedy must be formulated—one that meets federal standards of racial fairness. The Justice Department must thus both identify the objectionable and specify the acceptable. In a suggested districting scheme, are black ballots "fully meaningful" if there are only six majority-black districts when a seventh can be drawn? The purpose of preclearance, Justice Harlan had argued, was not "to implement new substantive policies." But nothing short of a substantive policy would answer the question that redistricting and other proposals submitted for federal review posed after *Allen*. It was, as Harlan put it, "a revolutionary innovation in American government that [went] far beyond that which was accomplished by § 4."

The Department of Justice and the D.C. district court, alone, have the authority to "preclear" proposed changes in electoral procedure, but their freedom to restructure local arrangements is not entirely unrestrained. To begin with, federal action depends upon local action. That is, an at-large method of voting is invulnerable to attack unless it is either newly proposed or has acquired new meaning as a consequence of a change in the racial balance of a city following an annexation. Districting, however, is never stable; plans must be altered to meet the one-person, one-vote standard after every decennial census. Thus every ten years in "covered" jurisdictions local redistricting triggers federal oversight.

The second constraint upon federal authority is less restrictive: there must be some evidence that the proposed change could be interpreted to "deny or abridge the right to vote on account of race or color." Not all annexations, all new district lines, or all newly instituted at-large systems of voting qualify as potentially discriminatory. But the burden is on the jurisdiction to prove an absence of wrongdoing; if the D.C. court or the Attorney General *suspects* the presence of discrimination, an objection will be lodged.

When is the introduction of an at-large or other method of election a violation of black voting rights? The freedom of federal authorities to define the condition of vote "dilution" was greatly enhanced by the wording of section 5, which permits preclearance of those electoral practices and procedures that "do not have the purpose and will not have the effect" of denying or abridging the right to vote on account of race. In l965, the reference to discriminatory effect was innocuous and thus unnoticed. The framers and sponsors of the act hoped to eliminate every device whose impact was to keep southern blacks from the polls—whatever its stated purpose. And, in the context, "effect" and "purpose" were close to interchangeable terms; the former was simply circumstantial evidence of the latter. That is, when the question was the legality of a recent alteration in voting procedure in a jurisdiction known to have had a long history of Fifteenth Amendment violations, the effect of the alteration was assumed to suggest strongly its purpose. The adverse impact of a sudden change in rules involving the franchise was viewed as a signal of improper motive when that change took place in the South and affected newly enfranchised blacks.

Once changes such as annexations and redistrictings were covered by the preclearance provision, however, "effect" was released from its intimate connection with "purpose." When a municipality annexes a suburban area, it may add more white voters than black to the city's voting rolls, but such an effect is not necessarily a clue to its purpose. The Court's decision in *Allen* suddenly applied the prohibition of section 5 to all changes that might have a disparate racial impact, whether intended or not. A districting plan that was racially neutral in intent could nevertheless be found discriminatory in effect.

Allen was crucial in the evolution of the Voting Rights Act from the first truly effective vehicle for southern black enfranchisement to a means by which political power is redistributed among blacks, whites, and (since l975) Hispanics. Ostensibly, the decision only involved the question of coverage—what sorts of changes qualify as alterations in voting "practice or procedure." But questions of coverage, disfranchisement (or "dilution"), and federal power are inseparable. Once the area of scrutiny is expanded, both the definition of enfranchisement and the power of the federal government to insist on methods of voting allegedly in the interest of minority voters become enlarged.

Allen v. Board of Elections began the process by which the Voting Rights Act was reshaped into an instrument for affirmative action in the electoral sphere. But the impact of the decision would have been limited without two other developments: repeated extensions of the "special" (temporary) provisions of the act by Congress, and a key judicial ruling, *Gaston County, North Carolina v. United States*, which was decided (like *Allen*) in l969. *Gaston* closed the door to escape from the act for southern states and counties.

Section 4 had suspended literacy tests wherever turnout in the presidential election of l964 was under 50 percent, but jurisdictions could sue for release from coverage on the ground that no test had been employed for discriminatory ends in the preceding five years. In l968 Gaston County, North Carolina, went to court. Six years earlier, the county had replaced its traditional oral test with a written one, and had begun a well- publicized process of re-registering all voters. The D.C district court (with sole authority to hear "bailout" suits) did not question either the new test's impartiality or the sincerity of the county's effort to reach black voters.

The southern setting, of course, made the test suspect, but although the Voting Rights Act was clearly aimed at the South, it did permit particular localities to prove themselves exceptions to the general rule of southern racism, and Gaston County believed that it qualified. The court, however, turned the county's petition down, finding the test to be discriminatory not in purpose but in effect. Until l965 the local schools had been segregated, creating the unequal educational opportunity that, according to Judge Skelly Wright, left blacks less prepared to pass a literacy test. In other words, such a test penalized blacks for an inadequacy imposed by the state. The opinion was a variation on a familiar theme: when opportunities have not been equal, meritocratic systems don't work. Gaston County had been attempting to administer a test of merit in a context of unequal educational opportunity.

Did inequality of educational opportunity in fact account for black illiteracy? A concurring opinion argued that blacks were disproportionately unable to read and write because they went to work rather than staying in school; even the education provided by segregated schools would have enabled blacks to pass Gaston County’s very simple test. That argument failed to persuade the Supreme Court, to which the country subsequently appealed. The burden was on the county to prove an absence of discriminatory effect, and that burden had not been met, Justice Harlan wrote for the majority. Judged by such measures as teacher training, facilities, and resources, black schools in the county prior to l965 had clearly been inferior. And, in Harlan’s words, those "inferior Negro schools provided many of [the county's] Negro residents with a subliterate education, and gave many others little inducement to enter or remain in school."

Gaston labeled the literacy test—however fairly administered—a disfranchising device for southern blacks. The Voting Rights Act, as initially conceived, had maintained the traditional distinction between the use of a device to deny or abridge Fifteenth Amendment rights and the normal exercise of a community's constitutionally sanctioned authority to set standards for voting. The statute assumed that potential registrants could still be screened for literacy, if not race. The North Carolina decision, however, collapsed that distinction. No evidence presented by a covered jurisdiction could prove its level of voter turnout unconnected to its use of a literacy test. There was no way, that is, of demonstrating that the statistical rule of thumb at the heart of the Act had been inappropriately applied in a particular case, that although total voter turnout had not reached 50 percent, blacks had not been kept from the polls. Gaston thus heightened the significance of Allen. A jurisdiction, once "covered," remained so. And coverage meant close federal scrutiny of every change in the method of election, from the relocation of a polling place to a districting or annexation decision.

In part this chapter has attempted to describe the central features of the Voting Rights Act, to convey a sense of the setting in which it grew, and thus to explain its distinctive design. In part, however, it has introduced an argument that I will develop at length as the book continues. The statute was, by all accounts, radical. The architects of the Constitution had left matters of suffrage almost entirely in state hands, although subsequent amendments had prohibited a poll tax and denial or abridgment of the right to vote on account of race, gender, or age (after eighteen). In enforcing the Fifteenth Amendment, the Voting Rights Act broke with constitutional tradition. It established the presence of constitutional violations not on the basis of comprehensive judicial findings, but by the use of a statistical rule of thumb, and to an unprecedented degree, it placed local electoral affairs in federal hands. Covered jurisdictions were subject to a stringent set of remedies, often enforced by the Department of Justice, to which broad administrative discretion had been granted. This was emergency legislation, necessitated by the persistent and egregious infringement of basic rights. Its sole concern was simple enfranchisement—ballots for southern blacks. And that limited aim, to which the Constitution was unequivocally committed, legitimized the drastic nature of its central provisions.

The act was structured to deal with one kind of question, but after l969 quite another kind was raised. Preclearance, a barely noticed provision in l965, permitted the Department of Justice to halt renewed efforts to proscribe the exercise basic Fifteenth Amendment rights; it allowed swift administrative relief for obvious constitutional violations. Attorneys in the Civil Rights Division were expected to confront a straightforward question: will the proposed change in voting procedure keep blacks from the polls? But after the decision in *Allen*, the questions were no longer so simple. The decision was correct, but, as I will subsequently argue, the consequences troubling. The statute was not designed for the purpose to which it would be put—resolving through administrative channels basic questions of electoral equality, determining when ballots "fully" count. A statute is not carved in stone, and old tools can be used for new purposes. But the revised aim must be legitimate, the tools appropriate to the task at hand.

The decision in *Allen* was both correct and inevitable. Mississippi, while providing the immediate catalyst, was not alone in attempting to soften the impact of the law. In addition, the meaning of enfranchisement was changing in constitutional cases and likely to change in statutory ones as well. In the l965 statute, the right to vote meant the right to register and cast a ballot, but already by that year a Fourteenth Amendment case had raised the issue of protecting minority citizens from electoral arrangements that diluted the impact of their votes. The question, I will argue in Chapter 4, logically followed from the one-person, one-vote decisions, with their guarantee of "fair and effective participation." By l969, in fact, the notion that ballots should fully count, that participation should be "fair and effective" was permeating other institutions too. For instance, the Democratic Party, had altered its rules for the selection of delegates following its 1968 convention. A commission chaired by George McGovern called upon party officials to take "affirmative steps to encourage minority group participation, including representation of minority groups on the national convention delegation in reasonable relationship to the group's presence in the population of the State." That recommendation became party policy.

There is a further point. While southern whites had feared that their world would crumble once blacks could freely go to the polls, many civil rights activists were skeptical that votes alone could shake the pillars of the racist status quo. Their laudable goal had been the radical transformation of relations between the races—true equality—and although the movement subsequently changed, that commitment remained. In most places black enfranchisement would, by itself, bring black power—black political influence—but not necessarily blacks *in* power. Yet holding public office came to be viewed as critical to the larger civil rights goal. Thus the statute was altered not only by judicial decisions and changing views on questions of democratic participation; pressure from the civil rights community, too, helped to transform the Voting Rights Act into an instrument for affirmative action, a means to ensure ballots that promoted "full" and "effective" representation.

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Executive summary of the Bullock-Gaddie expert report on Georgia:

Testifying in a 2002 voting rights case, Rep. John Lewis said:

"We have changed. We've come a great distance. I think in - - it's not just in Georgia, but in the American South, I think people are preparing to lay down the burden of race….There has been a transformation…It's altogether a different world…"

Lewis, of course, had put his life on the line marching for basic black enfranchisement in 1965; he knows we live in a "different world" today.

Under contract with us, two distinguished scholars—Charles S. Bullock III, the Richard B. Russell professor of political science, and Keith Gaddie, professor of political science at the University of Oklahoma—have documented that transformation in Georgia. Their main points:

• Georgia had a terrible history of black disfranchisement, but in the most recent presidential elections, black participation rates actually slightly exceeded those of whites. And if one compares Georgia to states outside the South, black registration is slightly higher and turnout is roughly the same.

• At ever-increasing rates, blacks are being elected to public office in the state. Between 1973 and 2005, 29 congressional races were won by blacks, 13 of them in majority-white districts. Four out of thirteen members of the state's current delegation to the U.S. House of Representatives are black—a uniquely high number in proportion to the state's population. Thirty-four officeholders in Georgia are elected statewide, and currently nine are black—a figure just short of proportional racial representation.

• By 2001, the black leadership in Georgia had become convinced that the election of blacks to office no longer depended on the creation of overwhelming majority-minority districts. An expert hired by the black attorney general had concluded that African-American candidates did not even need majority-black districts in order to be elected. The legislative black caucus, in signing on to the 2001 plan, was assuming substantial white crossover voting—an assumption based on experience.

• White support for black candidates in Georgia today is higher than black support for white office-seekers. Moreover, blacks often determine the outcome of the Democrat primary. But with the movement of whites into the Republican Party in the 1990s, neither white nor black Democrats attracted a majority of white votes. In 2004, white Democrats running statewide did no better than those who were black. In fact, looking at the four most recent elections, black candidates running statewide had a success rate of 71 percent, while the white rate was only 41 percent.

•In sum, blacks in Georgia are now fully enfranchised. There was reason in 1965 to target Deep South states like Georgia for extraordinary federal oversight over election procedures. But we live in a different world in 2005.

An Assessment of Voting Rights Progress in Georgia
Prepared for the Project on Fair Representation
American Enterprise Institute

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10/5/05 RKG

An Assessment of Voting Rights Progress in Georgia

Georgia was among the first states to adopt provisions that impeded black participation. In 1871, Georgia became the first state to enact a poll tax which it later made cumulative. In the wake of the Mississippi Constitution of 1890 and the subsequent validation of that document's restrictions on African-American political participation by the U.S. Supreme Court, Georgia joined other southern states adopting additional prerequisites for registration. These included a literacy test that required voters to demonstrate an ability to both read and write.

Like many southern states, Georgia also adopted provisions that limited participation in the Democratic primary to white votes. Since no Republicans won any major offices in the state for almost 100 years, the Democratic primary determined who would hold public office in Georgia - - except in a couple of mountain counties - - up until the early 1960s.

Georgia repealed the poll tax when it adopted a new constitution in 1945. The state's use of the white primary was invalidated by *Smith v. Allwright* (1944). Georgia sought to avoid this decision that banned the white primary in Texas. In his last gubernatorial bid, three-time governor Eugene Talmadge ran on a platform that promised to maintain the white primary. Despite Talmadge's commitment to the white primary, V.O. Key reports that a number of blacks voted in that year's Democratic primary.[1] When the General Assembly sought to maintain an all-white primary by divorcing the operation of the selection process from state influence, Acting Governor M.E. Thompson vetoed the legislation.

Even with the elimination of the white primary and the poll tax in the 1940s, black registration rates remained relatively low in Georgia the early 1960s. The literacy test coupled with frequently antagonistic local registrars discouraged black participation. In the period immediately

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[1] V.O. Key, Jr., *Southern Politics* (New York: Alfred A. Knopf, 1949), p. 636.

preceding the enactment of the 1965 Voting Rights Act only 27.4 percent of Georgia's non-white voting age population was registered.[2] At that time, more than twice as large a share of the white voting age population (62.6 percent) was registered. Only Alabama and Mississippi had smaller proportions of their potential black electorate registered to vote prior to the Voting Rights Act. In 30 counties with substantial African-American populations, less than ten percent of the age eligible blacks were registered in 1962. In four counties, fewer than ten non-whites had gotten their names on the voting list.[3] With little more than a quarter of the age-eligible non-whites registered to vote, Georgia was subject to the trigger mechanism of the 1965 Voting Rights Act.

Black Registration and Turnout

As in other southern states covered by Section 5 of the Voting Rights Act this new legislation had an immediate and dramatic impact. By 1967, a majority of Georgia's non-white voting age population (52.6 percent) had registered.[4] The increased registration also extended to the white population where just over 80 percent of the age eligible population had registered to vote.

Particularly dramatic increases in black registration occurred in the 30 counties that had most consistently rebuffed black political overtures. Table 1 reports the white and non-white registration rates as of December 1962 for the counties in which fewer than 10 percent of the age-eligible non-whites were registered. In the 30 counties in which fewer than 10 percent of the non-white potential electorate was registered, substantially larger shares of the white population were registered except for Chattahoochee county. In a number of the counties, the registration rolls

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[2] Figures for December 1962 are fromU.S. Commission on Civil Rights, *Political Participation* (Washington, D.C.: U.S. Government Printing Office, 1968), p. 238. Figures are presented for non-whites and whites. Almost all Georgia non-whites in 1960s would be African American.

[3] We exclude from this tabulation four mountain counties which had fewer than ten non-white residents of voting age as of the 1960 Census.

[4] *Political Participation*, *op. cit*., p. 239.

included more names of whites than the age eligible white population counted in 1960. The evidence is clear that while non-whites found it difficult to register, comparable barriers did not dissuade whites who wished to sign up to vote.

(See Table 1)

By 2004, not only had registration rates for African Americans gone a long way towards catching up with white registration rates, the more important element of actual participation shows large numbers of blacks turnout in each of these counties. As shown in Table 1, in each of the 30 counties with low rates of black registration in 1962, African American registration had become widespread by 2004. Not only had registration increased massively but so had participation rates. In every one of the 30 counties at least a majority of the black women who were registered voted in 2004. At the upper end, in the Atlanta suburbs of Fayette, Chattachoochee and Marion counties, 88 percent of the black women along with 82 percent of the black men who were registered participated. A higher proportion of black female registrants than white male registrants voted in Fayette County. The more common pattern, however, was for black turnout rates to lag those for whites although in a number of counties, the participation rates of black females were roughly comparable to those of whites. Generally the greater racial disparities persisted in rural counties while in the suburbanizing counties like Chattahoochee, Fayette, Houston, Lee and Madison, voting rates for black women were quite similar to those for whites. Participation rates among African-American men invariably lagged those of black women with the disparity often being more than 10 percentage points.

After each election the U.S. Bureau of the Census conducts a massive survey to determine the registration and turnout rates in the previous general election. These figures are self reports and the denominator in calculating the percentages of registration and participation is the voting age population of the jurisdiction. Self reported political participation data tend to overestimate actual participation rates; nonetheless these figures are useful for making comparisons over time and across jurisdictions.

By 1980, the share of the African American voting age population that reported it was registered in the U.S. Bureau of the Census survey, stood at 59.8 percent as shown in Table 2. The comparable figure for the share of the white voting age population claiming to be registered was 67 percent. During the1980s approximately seven percentage points more whites than blacks were registered with the greatest disparity, 7.8 points, occurring in 1982.

(See Table 2)

In 1990, black and white Georgians had nearly identical registration rates. Among African Americans of voting age, 57 percent reported being registered compared with 58.1 percent of whites. In 1994, a larger proportion of blacks (57.6 percent) than whites (55 percent) reported being registered. Among blacks 57.6 percent reported being registered compared with 55 percent of the whites. Beginning with 1994, blacks have reported registering at higher rates than have whites in four of the six most recent elections. This includes both the mid-term elections of 1994 and 1998 as well as the two most recent presidential elections. In 2002, the disparity is only 1.1 percent points with 61.6 of voting age blacks and 62.7 percent of voting age whites reporting that they were registered.

The data in Table 2 permit comparisons between the reported registration rates of Georgians and non-southerners. From 1980 through 1994, blacks living outside the South invariably reported higher rates of registration that did Georgia blacks. In 1982, 1984, 1988 and 1992, the difference approximated ten percentage points. Beginning with 1996, self-reported registration rates among Georgia blacks always exceed those for blacks outside the region. In the three most recent elections for which comparisons are available, Georgia black registration is approximately five percentage points higher than for non-southern blacks.

These figures indicate that the disparity in registration rates which prompted the passage of the Voting Rights Act and the inclusion of Georgia as a state subject to the trigger mechanism have been corrected. Even before the implementation of the Motor Voter Act (1993) and the Help America Vote Act (2002), both of which were designed to facilitate registration and participation, the disparity in black and white registration rates had largely been eliminated. During the last four elections, black registration has generally exceeded white registration in Georgia. As of 2004, African Americans constituted 27.2 percent of all registered voters in Georgia. This is almost exactly the black share of the citizen voting age population as of the 2004 census which stood at 27.5 percent.

Moreover, the disparity in self-reported registration rates between African Americans in Georgia and outside the South has been eliminated. Blacks in Georgia now report signing up to vote in rates equal to or higher than blacks in other parts of the country.

The rate at which registered voters have turned out to vote has also increased in Georgia. As shown in Table 3, in 1980 the Census Bureau estimated that 43.7 percent of the age-eligible African Americans voted in the general election along with 56 percent of the white adults. In the mid-term election of 1982, the racial disparity dropped to 8.2 percentage points as 32.5 percent of the voting age blacks along with 40.7 percent of the whites reported participating in the general election. The pattern has generally been for there to be a greater disparity in turnout rates in presidential than in mid-term elections. Until 1996, whites turned out in presidential elections at rates at least ten percentage points above those for blacks. Even in 1996, white turnout exceeded the black figure by almost seven percentage points. In contrast, in mid-term elections, the greatest racial differences in

1982 and 1999 and are under almost 8 percentage points. In 1990, almost identical percentages of black and white Georgians went to the polls and in 1986, the white figure is only three points above the black figure.

(See Table 3)

Reported black turnout rates as a percentage of the age eligible remained in the 40 percent range in presidential elections until 2000 when it reached 51.6 percent. This level of black participation exceeded the percentage of age eligible whites who reported voting (48.3 percent). In the most recent presidential election, black participation rates again slightly exceeded those for whites. This also marked the high point of black registration during the last quarter century. In mid-term elections, the proportion of age eligible blacks who reported voting peaked in 1990 at 42.3 percent. Thereafter, it seesawed dropping to 30.9 percent in 1994, rising to just over 40 percent in 1998 and the ebbing to 38.5 percent in 2002. Only in 1998 has black turnout exceeded white participation in mid-term year.

The bottom part of Table 3 provides turnout data for blacks and whites outside of the South. In the 1980s, blacks voted at much higher rates in the non-South than in Georgia. In 1982, for example, the difference reached 16 percentage points while in the next presidential election year, it was 13 percentage points. In the three most recent elections for which non-southern figures are available, however, the reported participation rates for African Americans in Georgia and the non-South have been essentially equal. In 1998, both sets of blacks reported voting at just over 40 percent while in 2002, the figure was approximately 39 percent. In 2000, blacks outside the South reported participating at a rate 1.5 percentage points greater than Georgia African Americans.

The comparison of black participation rates in Georgia and outside of the South indicate that much of the disparity of 20 years ago has been eliminated. Note that in two of those three most recent election years, the reported black participation rate in Georgia exceeds that for whites while outside the South, participation rates are almost identical to those for Georgia African Americans.

A problem with self-reported political participation data is a tendency by respondents to give socially-approved answers. Some share of individuals who were unregistered will tell a pollster that they had registered. And because of the heavy emphasis placed upon the civic duty of voting, a number of non-voters will report that they went to the polls.[5]

Georgia is one of the very few states that maintains its registration data by race. Therefore in Georgia and four other states it is possible to have data on registration free of the problems associated with over-reporting. The registration data maintained by the states that collect information on race will have a smaller problem since individuals may not accurately indicate their race or opt for the "other" category.

Since 1996, Georgia's Secretary of State has done a post-election audit by going through the voter sign-in sheets to determine who actually turned out and then cross checking that information against the registration data that show the race of the voter. Unlike the figures provided by the Census Bureau, these are not estimates but instead are actual counts. Table 4 shows that in 1996, 53.5 percent of the black registrants turned out along with 64.3 percent of the white registrants. In the gubernatorial election year of 1998, the racial difference shrank as 42.8 percent of black registrants along with 48.2 percent of white registrants who voted. In both 2000 and 2002, about 10 percentage points more whites than black registrants voted. The 2004 presidential election spurred

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[5] See, for example, Paul R. Abramson, and William Claggett, 1984. Race-related Differences in Self-Reported and Validated Turnout. *Journal of Politics*, 46: 719-739.

participation rates in Georgia as it did in much of the country. Among black registrants, 72.2 percent voted and 80.4 percent of the white registrants participated in that election.

(See Table 4)

While turnout rates for whites remain higher than those for blacks, the variation in the participation rates for both groups indicate that blacks are not subject to systematic discrimination at the polling place. The black turnout rate in 2004 exceeds the white turnout rate in any year prior to 2004.

Political science research suggests that lingering disparities in participation rates among ethnic groups may be due more to differences in socioeconomic characteristics than in obstacles to registration. The literature on American political participation consistently finds that socioeconomic status (SES) is the determinant of political involvement. The classic *Who Votes?*,[6] Leighley and Nagler's[7] reexamination of the *Who Votes?* analysis, and the work of Verba and his colleagues[8] consistently finds this effect across ethnic and racial groups. Additional research finds

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[6] Raymond Wolfinger, and Steven Rosenstone. 1980. *Who Votes?* New Haven: Yale University Press.

[7] Jan E. Leighley and Jonathan Nagler. 1992. Class Bias in Turnout: The Voters Remain the Same. *American Political Science Review* 86: 725-736; Jan E. Leighley and Jonathan Nagler. 1992. Individual and Systemic Influences on Turnout: *Who Votes?* 1984. *Journal of Politics* 54: 718-740.

[8] Sidney Verba and Norman Nie, 1972. *Participation in America: Political Democracy and Social Equality.* New York: Harper, Row; Sidney Verba, Kay Lehman Schlozman, and Henry Brady, 1995. *Voice and Equality Civic Volunteerism in American Politics.* Cambridge: Harvard University Press.

that, once one controls for SES, black “overparticipation” is found [9]. However, Abramson and Claggett[10] observed that African-American voter participation sill lagged white participation, even when controls for socio-demographic influences -- especially education – were introduced, while Uhlaner, et al find that Anglo whites and African-Americans have similar rates of political participation, and that it is Latinos who lag in voting due to education and citizenship factors.[11] Leighley and Vedlitz find that cultural theories are largely not valid in explaining differences in participation beyond SES effects.[12]

Socio-economic status matters, but so too does political effort. Katherine Tate argues in the *American Political Science Review* that participation by African-Americans is associated with education, political interest, and partisanship.[13] She also observes that intensity of racial identity is

[9] See, for example, Thomas M. Guterbock, and Bruce London. 1983. Race, Political Organization, and Participation: An Empirical Test of Four Competing Theories. *American Sociological Review* 48: 439-453; Marvin E. Olsen, 1970. Social and Political Participation of Blacks. *American Sociological Review*. 35: 682-697; Verba and Nie, 1972.

[10] Paul R. Abramson, and William Claggett, 1984. Race-related Differences in Self-Reported and Validated Turnout. *Journal of Politics*, 46: 719-739.

[11] Carole J. Uhlaner, Bruce E. Cain, and D. Roderick Kiewiet, 1989. Political Participation of Ethnic Minorities in the 1980s. *Political Behavior* 11: 195-231.

[12] Jan E. Leighley and Arnold Vedlitz, 1999. Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations. *Journal of Politics* 61: 1092-1114.

[13] Katherine Tate, 1991. Black Political Participation in the 1984 and 1988 Presidential Elections. *American Political Science Review* 85:1159-1176.

not a source of participation,[14] but instead participation in civic culture organizations such as churches or political organizations drives participation. Arnold Vedlitz finds that intensive voter registration drives do not in and of themselves increase participation, but rather increase the number of non-voting registrants.[15] Instead, it is registration plus mobilization – as Tate observed – that matters. Wielhouwer validates the importance of these findings by uncovering that, while African-Americans are undercontacted, the undercontacting arises from a lack of GOP contacting.[16] Those who are contacted belong to civic culture organizations that possess strong social networks. According to Wielhouwer, while education still matters, contacting is important to explaining variation in mobilizing black voters.

The actual figures on turnout rates indicate that African Americans have not voted at higher rates than whites in South Carolina. While the figures in Table 3 are more reliable than those in Table 2, comparisons with most other states are not possible using the Table 3 data since most states do not maintain registration data by race nor do they report turnout data by race. Therefore even

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[14] Maurice Mangum (2003), writing in the *Political Research Quarterly*, finds that group efficacy – the belief that their group is taken seriously – motivates participation among African-Americans, as does trust in government and the degree of individual political engagement. See Maurice Mangum, 2003. Psychological Involvement and Black Voter Turnout. *Political Research Quarterly* 56: 41-48.

[15] Arnold Vedlitz, 1985. Voter Registration Drives and Black Voting in the South, *Journal of Politics* 47: 643-651.

[16] Peter W. Wielhouwer, 2000. Releasing the Fetters: Parties and the Mobilization of the African American Electorate. *Journal of Politics*. 62: 206-222.

though the problems frequently associated with over-reporting of turnout and registration by individuals render the figures in Tables 1 and 2 somewhat suspect, nonetheless the suspicions are likely to be widespread so that using data in Table 1 and 2 is appropriate for making comparisons across state or between states and regions.

African-American Officeholding

In 1969, Georgia had a total of 30 African American officeholders of whom 14 served in the legislature. Table 5 shows that another eight sat on city councils and three served on school boards. By 1973, the number of black officials in Georgia had risen to 100 and three years later it topped to 200. By 1984, there were just over three hundred African Americans holding public office in Georgia with 170 serving on city governing board and another 58 serving on school boards.

(See Table 5)

As the consequences of Section 2 of the revised Voting Rights Act of 1982 began to take affect and at-large systems were replaced by single-member district systems, African American officeholders continued to grow. By 1987, the total number of blacks holding public office in Georgia stood at almost 150 percent above the 1984 figure and by 1991 more than 500 blacks served in Georgia. Thereafter the growth increases so that by 2001, 611 African Americans hold office in the Peach State. As in most recent years, approximately half of the black office holders serve at the municipal level with another six serving in county offices and approximately an equal number sitting on school boards.

African Americans in Congress

In 1972, Georgia joined Texas in becoming the first southern state to send an African American to Congress in the 20th century. Civil rights activist Andrew Young, who had won the Democratic nomination for Congress in 1970 but lost to a Republican incumbent, won the seat in 1972. Young won in a 44 percent black district by fashioning a biracial coalition that involved substantial backing in the white community. Young won reelection in 1974 and 1976 by taking two-thirds of the vote in the latter general election. After his third victory, Young resigned his position in order to accept the appointment by President Jimmy Carter to become the U.S. Ambassador to the United Nations.

In the special election to fill the vacancy created by Young's resignation, white liberal Wyche Fowler led a field 12 candidates with 40 percent of the vote. In the subsequent runoff, Fowler easily defeated civil rights hero John Lewis by taking 62 percent of the vote.

Fowler held the Fifth Congressional district seat for a decade during which time he defeated a number of African-American challengers. Even after the district became 65 percent African American by population following the 1982 redrawing, Fowler continued to win reelection. As had been the case with his predecessor, Fowler succeeded by appealing to a biracial coalition.

Following Fowler's 1986 decision to seek the U.S. Senate seat held by Republican Mac Mattingly, a large field entered the Fifth District Democratic primary, all but one of whom was African American. In the initial primary, state Senator Julian Bond led with 47 percent of the vote while John Lewis, making another bid for the House, polled 35 percent of the vote. In the crucial runoff, Lewis succeeded by winning more than 80 percent of the white vote. While Bond attracted the bulk of the black vote, Lewis's biracial coalition produced a 52 percent majority.

John Lewis continues to represent the Fifth District and is the dean of Georgia's House delegation. In 1993, he was joined by two other African Americans, Sanford Bishop from the

Second District in southwest Georgia and Cynthia McKinney who won the Eleventh District that stretched from Atlanta's eastern suburbs to Augusta and then on down to Savannah. With three African Americans in the eleven person delegation, blacks had achieved a level of representation equal to their share of Georgia's 1990 population.

Following the 2001 redistricting, David Scott became the fourth African American in Georgia's House delegation. With four African-American House members, Georgia equaled the largest number of black members ever to represent a state in Congress at one time. The other states that have had as many as four African Americans in the House all had much larger delegations. Currently the 29-member New York delegation and the 53-member California delegation each has four African-American representatives. When Scott joined the delegation that now included 13 members, African Americans' share of Georgia House seats (31 percent) exceeds the percent black in Georgia's population (29 percent).

The numbers that appear beside the names of the African-American legislators in Table 7 indicate the percent black in the total population in the district using the figures from the preceding census. These numbers demonstrate that of 29 congressional elections won by African Americans 13 occurred in districts in which less than half of the population was black. Of the 16 contests won by African Americans in majority-black districts, ten occurred in the Fifth District. Sanford Bishop has won five of his seven elections in districts in which most of the population was white. Even in the two elections that he won when his southwest Georgia district had a black majority in its population, most of the registrants were white. David Scott has also won in a district in which blacks do not constitute a majority of the population or of the registrants. Half of Cynthia McKinney's six victories came in a district in which whites outnumbered blacks. Even in 2002 when she lost her reelection bid in the Democratic primary, a contest in which more whites than blacks voted,[17] the winner was another African-American woman, state court judge Denise Majette. The ability of African Americans to win congressional seats in districts in which most voters are white provides evidence that at least a share of the white electorate is quite willing to have a black representative.

In 1995 in *Miller v. Johnson*, the U.S. Supreme Court struck down Georgia's Eleventh congressional district for violating the Equal Protection Clause of the Fourteenth Amendment. The court concluded that in drawing this district the General Assembly violated the U.S. Constitution because it relied predominately on race and subordinated traditional districting principles. That decision touched off widespread concern, especially in the minority community, that redrawing the majority-minority districts to increase their white populations would end the careers of the African American legislators. The 1996 election proved those fears to be unfounded as both Bishop and McKinney won reelection easily. Both of the black members who now found themselves in majority-white districts triumphed over white Republican challengers in the general election. In the primary, Bishop defeated two white challengers while McKinney turned back opposition from three white Democrats.

Some sought to discount these victories by attributing them to the incumbency status of the black members and asserted that had these been open seats, whites would have won. The 2002 election provides a partial test of that proposition in District 13. There state Senator David Scott faced three experienced challengers. The field competing for this open seat included another black state senator, a white state senator, and a former white congressional candidate who had most recently served as executive director of the state Democratic Party. Not only did Scott turn back

[17] Charles S. Bullock, III, Ronald Keith Gaddie and Ben H. Smith, III, "White Voters, Black Representation," presented at the annual meeting of the Southwestern Political Science Association, San Antonio, TX, April 16-19, 2003.

these qualified opponents, he managed to win a majority of the vote in the Democratic primary thereby avoiding a runoff.

While Scott managed to win in a majority-white district, an African American nominee lost in another Georgia district that had approximately the same racial composition. In the 42.3 percent black Twelfth District, African American Champ Walker won the Democratic nomination in a runoff against another black contender. Walker, however, proved to be a deeply flawed candidate who had been arrested multiple times, although never convicted. Moreover, he ran an inept campaign in which he performed poorly in some debates and avoided others.[18] Walker, a political novice, lost the general election taking only 45 percent of the vote. Walker's greatest strength may have also proven to be his greatest liability. His father, Charles Walker, served as the majority leader in the state Senate that, along with the House, drew the district in which his son Champ ran. Suspicions of corruption had surrounded the older Walker and ultimately he was convicted on more than 125 federal charges and removed from the Senate.

African Americans in the State Legislature

Georgia elected an African American senator in 1962 making Leroy Johnson the first black southern legislator in modern times. By 1965, when the Voting Rights Act was first passed, Johnson had been joined by a second African American in Senate, which at that time still had 54 members. The Georgia House which reapportioned after the Senate had seven African Americans following implementation of the one-person, one-vote standard in a 1965 special election. Since the House had 205 members at that time, African Americans held approximately 3 percent of the seats in the lower chamber.

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[18] Charles S. Bullock, III, "The 2004 Georgia 12th Congressional District Race," in *Dancing without Partners*, edited by David B. Magleby, J. Quin Monson and Kelly D. Patterson (Provo, UT: Center for Study of Elections in Democracy, 2005), pp. 275-287.

As Table 6 shows, increases in the number of seats held by African Americans in the Senate came slowly with only two black members until after the 1980s redistricting when the number doubled to four. By 1985, blacks held more than a tenth of the seats in the Senate. Gradual increases continued and by 1997, the black delegation constituted almost a fifth of the Senate, a figure that, aside from a dip in 2003, has persisted through 2005.

(See Table 6)

In the House, the growth in the number of seats controlled by blacks continued from the initial election of African Americans following a special redistricting carried out in 1965. By 1975, African Americans held a tenth of the House seats. Black representation in the House stalled for a decade beginning in 1977 before it began gradually increasingly. In 2001, blacks held a fifth of the House seats and following redistricting, their share increased to 21.7 percent. These numbers persisted in 2005 although in that year, for the first time in modern memory, a Republican African American served in the House.

As Table 6 demonstrates, black representation in the Georgia General Assembly has increased dramatically since the initial passage of the Voting Rights Act. These increases come even as the number of Democrats serving in the legislature has decreased. In the 2005 Senate there are more black Democrats (11) than white Democrats (10).[19] Following the defection of a white to the GOP in August 2005, the House had three more white (41) than black (38) Democrats.

Statewide African American Officials

The first African American to hold a statewide office in Georgia was Robert Benham who served on the state Court of Appeals, the state's second highest tribunal. Benham had initially been appointed in April of 1984 and in the subsequent summer non-partisan primary, he defeated three

[19] The 22nd Democrat in the Senate is a Latino. There is also a Latino in the House Democratic delegation.

white challengers. The position to which Benham was initially appointed has passed to two other African Americans.

When Benham was appointed to the Supreme Court of Georgia he was succeeded by Clarence Cooper a superior court judge. Cooper won a full term approximately six months after being appointed and in doing so turned back a white challenger. When Cooper received promotion to the Federal district bench, John Ruffin, another African American succeeded him. Ruffin has subsequently been returned to the bench twice with no opposition.

In 1999, Governor Roy Barnes appointed two African Americans to newly created seats on the Court of Appeals. Yvette Miller and Herbert Phipps have each subsequently won reelection to the Court of Appeals with no opposition.

In 1989, Robert Benham became the first African American to serve on the Supreme Court when he was named to an interim vacancy. In 1990, he won reelection by defeating a white challenger. Benham has run unopposed in the elections of 1996 and 2002.

In 1992, Leah Sears-Collins became the first African-American woman to serve on the Supreme Court when she was appointed to a vacancy by Governor Zell Miller. A few months later, Sears-Collins won election to the remainder of the term and in so doing defeated a white challenger. When Sears won a second six-year term, she did so by defeating two white challengers in the non-partisan primary. Again in 2004, Sears won another term and in so doing defeated a white conservative who had strong support from Georgia's Republican Governor Sonny Perdue and from other leading Republicans.

In June of 2005, Gov. Perdue tapped a third African American for the seven-person Supreme Court. Harold Melton, who had been the governor's chief counsel, will face the electorate for the first time in 2006 when he runs for the remaining years of the term.

Some have discounted the victories of black judges arguing that, although statewide offices, judgeships attracted little public interest and, at least until recently, were low-key affairs. In 1998, efforts to discount the statewide victories of black judges had to deal with two victories by African Americans who won constitutional offices. Former state Representative Thurbert Baker had been appointed to an interim vacancy as attorney general of Georgia. In 1998, he won a full term against a strong challenge from a Republican senator. In 2002, Baker won a second term.

At the same time that Baker was winning a full term as attorney general, Michael Thurmond, a former state legislator, won election as the state's labor commissioner. Thurmond's victory came after he won the nomination in a Democratic runoff and then turned back a Republican opponent. Like Baker, Thurmond won a second term in 2002.

In 2000, David Burgess became the first African American to hold one of the five seats on the state Public Service Commission. Members of the PSC must live in a particular district although they are elected statewide.

Georgia has a total 34 officials who are elected statewide - - including two U.S. Senators, eight constitutional officers, seven members of the Supreme Court, twelve members of the Court of Appeals, and five members of the Public Service Commission. As of the middle of 2005, nine of these 34 statewide officials are African American. All but the newest member, Harold Melton who was only recently appointed to a vacancy on the Supreme Court, have won election at least once and several of these have multiple statewide victories under their belts.

All of these African Americans who have won statewide elections have done so with substantial white support. Since as Table 4 shows, whites cast approximately three-fourths of the votes in a general election, it would be impossible for an African American to win by mobilizing only black support.

Redistricting

In light of the success enjoyed by African Americans seeking office in Georgia it may not be surprising that in 2001 much to the state's black leadership agreed to have black concentrations in legislative districts reduced. As shown in Table 7, the black percentage in John Lewis' district dropped from 62 to 56 percent. In the state Senate, the plan adopted by that body in 2001 reduced the black voting age population in majority-black districts by an average of 10.3 percentage points as shown in Table 8.[20] This plan was supported by Majority Leader Charles Walker, Rules Committee Chair David Scott and Robert Brown, the vice-chair of the Reapportionment Committee. These three legislative leaders are African Americans and could have stopped the plan had they been concerned that retrogression would reduce the likelihood that African Americans could win seats. Three districts that had been more than 60 percent black in voting age population emerged from the new plan less than 51 percent black in voting age population. Walker's own district went from 63.1 down to 51.5 percent black in its voting age population. Brown strongly supported the plan that reduced the black voting age concentration in his district from 62.3 down to 50.8 percent.

(See Table 7)

In accepting these reductions in minority concentrations, the members of the Legislative Black Caucus seemingly bought into the analysis prepared by David Epstein, the expert employed by Attorney General Thurbert Baker, who is also an African American. Epstein concluded that African Americans have a reasonable chance of being elected even in districts in which blacks constituted less than half of the voting age population. Specifically, his estimate was that a legislative district without an incumbent needed a black concentration of 44 percent of voting age

[20] Testimony of David Epstein in *Georgia v. Ashcroft*, C.A. No. 01-2111 (EGS) (D.C. D.C.), February 4, 2002, Day 1, pp. 15-20.

population for African Americans to have a 50-50 chance of electing their preferred candidate.[21] Among those who agreed with the results of the professor's sophisticated models was Charles Walker who testified in response to a question about what level the black voting age population would need to be for African Americans to have an equal chance of winning in Georgia. Walker responded, "Forty percent and above. Generally around the state, I would feel comfortable at a 45 percent BVAP level."[22]

As the black voting age population increases above 44 percent, the probability of electing a black increases. In four of the districts approved by the black senators, the majority of the registrants were white. In the plan that was replaced, blacks had constituted a majority of the registered voters in all but twelve districts. In all but two of the districts, at least 60 percent of the registrants were black in 2000. The number of Senate districts in which the black registration figure exceeded 55 percent dropped from eleven in the old plan to seven in the plan passed in 2001.

As demonstrated earlier, the rate of white registration tends to exceed that of black registration. Moreover, among registered voters, figures from the Secretary of state reported in Table 4 show white registrants voting at higher rates than blacks. Consequently it is likely that whites would constitute most of the voters in at least five of the previously majority-black districts in the 2001 plan. Therefore, the implication of the Epstein analysis that was accepted by the Legislative Black Caucus is that African-American candidates can attract a sufficient share of the white vote since if whites voted cohesively against black candidates then in districts in which whites cast most votes, African Americans could not win.

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[21] *Ibid*., February 5, 2002, Day 2, Volume II, p. 29.
[22] Affidavit of Charles Walker in *Georgia v. Ashcroft*, 539 U. S. ____ (2003), February 1, 2002, p. 12.

The evidence both from statewide elections and some congressional elections indicates that African Americans now enjoy a degree of success in Georgia even when the bulk of the electorate is white. The blacks who have won statewide contests have succeeded at a time when blacks cast a quarter of all votes or less thereby indicating a substantial white crossover vote for the African-American candidate.

The Department of Justice in the Section 5 hearing conducted by the District Court of the District of Columbia on Georgia's 2001 plans accepted the reductions in black concentration in all but three of the state Senate districts. DOJ voiced no concerns about any of the congressional or state House districts. DOJ even accepted Senate District 15 in which the black VAP fell from 61.6 down to 50.9 percent and District 22 in which the decrease was from 63.1 down to 51.5 percent. In both of these districts more than 64 percent of the registrants had been black but in the new plan blacks accounted for right at 50 percent of the registrants. Thus DOJ found most of the work done by the Georgia General Assembly acceptable under Section 5 of the Voting Rights Act. Even the three Senate districts (2, 12 and 26) to which DOJ objected, where subsequently approved by the U.S. Supreme Court which found that Section 5 was not violated by any of the 2001Georgia districting plans.[23]

In the forefront of those who believed that reducing the black concentration in Senate districts did not endanger the reelections of incumbents or endangered the political prospects for African American candidates was Georgia's African-American Attorney General Thurbert Baker. He pursued an appeal to the Supreme Court challenging the district court conclusion that three of the Senate districts violated the Voting Rights Act by reducing black concentrations. Baker persisted in his appeal even when ordered to drop it by Georgia's new Governor Sonny Perdue (R).

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[23] *Georgia v. Ashcroft*, 539 U. S. ____ (2003),.

A leading supporter of the effort to reduce minority concentrations in legislative districts was Congressman John Lewis, whose severe beating at the Edmond Pettus Bridge during efforts to secure voting rights for blacks in Selma, Alabama helped mobilize support critical for the passage of the 1965 Voting Right Act. Explaining why he did not object to the reduction in minority concentrations, Lewis said of Georgia,

> The state is not the same state it was. It's not the same state that it was in 1965 or in 1975, or even in 1980 or 1990. We have changed. We've come a great distance. I think in - - it's not just in Georgia, but in the American South, I think people are preparing to lay down the burden of race.[24]

Elsewhere in this same affidavit, Lewis elaborated,

> I think many voters, white and black voters, in metro Atlanta and elsewhere in Georgia, have been able to see black candidates get out and campaign and work hard for all voters. And they have seen people deal with issues as, I said before, that transcend race: economic issues, environmental issues, issues of war and peace. . . So there has been a transformation, it's a different state, it's a different political climate, it's a different political environment. It's altogether a different world that we live, really.[25]

Senator Robert Brown who served as vice-chair of the Senate Reapportionment Committee also agreed that major changes have taken place in Georgia. During the course of an affidavit, he express the nature of the change as follows: "There are other examples of that around the state that

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[24] Affidavit of John Lewis in *Georgia v. Ashcroft*, 539 U. S. ____ (2003), February 1, 2002, p. 18.
[25] *Ibid*, pp. 15-16.

I think suggest that there has been some change from that rigid, 'if there's an African-American on the ticket, there's an automatic 'no' votes for whites.'"[26]

Senator Brown testified that with one possible exception, his fellow African-American senators strongly supported the plan that reduced the black concentrations in what had been the majority-black districts in their chamber. As he pointed out, speaking of the critical nature of black support, "The Senate Plan would not have passed without our support."[27] Brown opined that a district that was 50 percent black in its voting age population would likely be won an African American even if the candidate were competing for an open seat and lacked the advantages of incumbency.[28]

Racial Voting Patterns

The willingness of the Department of Justice and the Supreme Court to accept Georgia plans that in the past might have been found to be flawed by retrogression underscores the changes in racial voting patterns in the state. Where in the past, blacks may have been more willing to support a white candidate than white voters were to cast ballots for a black candidate, that situation has changed dramatically. Today, black voters area able to count on the support of substantially larger shares of the white electorate - - shares that exceed the proportion of black voters who defect from a black candidate to support a white candidate.

Another change has been the growing importance of the African –American vote in the Democratic primary. Table 9 shows that in 2004 blacks cast 47.2 percent of the votes in the Democratic primary. These figures are taken from the post-primary audit done by the secretary of

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[26] Affidavit of Robert Brown in *Georgia v. Ashcroft*, 539 U. S. ____ (2003),, February 1, 2002, p. 8.
[27] *Ibid.*, p. 27.
[28] *Ibid.*, p. 30.

state and are derived from the voter sign-in sheets. In each of the last two primaries, blacks have cast at least 45 percent of the Democratic ballots.

(See Table 9)

To help understand the significance of this high level of black participation in the Democratic primary consider that African Americans are now accounting for almost half of the Democratic primary votes even though they constitute 27 percent of the state's registrants. While there would certainly be variation from one part of the state to another, it is likely that in districts at least 30 percent black African American's may cast the bulk of the votes in the Democratic primary. Thus in any district with a sufficient minority concentration, African Americans would have a reasonable chance of wining a seat there is a strong probability that black votes can determine the Democratic primary choice.

Table 10 presents estimates of black and white support for African-American candidates running for Congress in the Fifth Congressional District from 1970 through 1982. The figures prior to 1978 show, with one exception virtually no black support for a white candidate. Except for the 1974 general election, white support for black candidates never attained 45 percent.

This era during which blacks gave near unanimous support to black candidates largely coincides with the period when Andrew Young was the Democratic nominee in the 5th district. Beginning with 1978, the district had a white Democratic incumbent, Wyche Fowler. The sharp decrease in black support for black candidates indicates Fowler's ability to fashion a biracial coalition. Figures in Table 10 also show that during the Young era, a sizable proportion of the white electorate supported an African –American candidate. This level of support among whites peaked in the 1974 general election, when most voters in the white district backed Young in his first reelection bid. After Young left Congress to represent the United States at the United Nations, and was succeeded by Fowler, white support for black opponents to Fowler fell to ten percent or less.

(See Table 10)

Moving to the 1990s, estimates made by Allan Lichtman of voting behavior in statewide contests in the portions of Georgia in Congressional Districts 2 and 11 as configured in the 1992 plan, showed African-American candidates frequently getting more than 90 percent of the black vote and virtually none of the white vote.[29]

Estimates of racial voting patterns in Georgia congressional races held during the 1990s presented in Table 11 usually show African-American candidates polling 30 or more present of the white vote and 90 or more percent of the black vote.[30] The one African American who ran poorest among those in Table 11 is Denise Freeman who took on popular incumbent Charlie Norwood. The estimates presented in Table 11 suggest that while she continued to get very strong support among African American voters, she polled little more than a fifth of the white vote.

(See Table 11)

As Table 12 shows, the inability of African-American candidates - - except for John Lewis in 1998 - - to attract majority support among white voters is a difficulty also encountered by white Democrats. In neither 1996 nor 1998 did any white Democratic candidates for Congress in Georgia attract a majority of the white vote. In 1994, only one Democratic nominee managed to get the bulk of the white vote. In 1992, three white Democrats got the bulk of the white vote. Thus what Table 12 shows in part is the increasing movement of white voters to the Republican primary.

Consequently while in the early 1990s, white voters responded to black and white Democrats

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[29] Allan J. Lichtman, "Report on Issues Relating to Georgia Congressional Districts," May 26, 1994.

[30] Charles S. Bullock, III and Richard E. Dunn, "The Demise of Racial Redistricting and the Future of Black Representation," *Emory Law Journal* 48 (Fall 1999): 1209-1253.

differently, by the end of the decade, most white voters found Democratic nominees, regardless of the candidates' race, unacceptable.

(See Table 12)

Another perspective on the similar response that Georgia voters give to Democratic candidates regardless of the race of the candidate, appears in Table 13. The 2004 Georgia ballot contained three offices that all voters could participate in - - two involved a white Democratic nominee while the Democratic Senate nominee was African American, one-term U.S. Representative Denise Majette. The results in Table 12 show that three Democrats, all of whom lost, polled remarkably similar vote shares with John Kerry attracting 41.4 percent of the vote, Majette 40.0 percent of the vote and the Democratic nominee for the Public Service Commission 39.5 percent.

(See Table 13)

Democrats split the 2002 statewide results winning five and losing six. However once we control for the race of the Democratic nominee, a different pattern emerges. The white Democratic nominees won only three of nine contests in which they competed while both of the black Democratic nominees won. Both of the African Americans were incumbents but then so were all but two of the white Democratic nominees. White Democratic incumbents won three while losing four contests, including the two at the top of the ticket for senator and governor.

In 2000 Democrats won half of the four contests in which all Georgians could vote and one of the winners was the only African American nominee. White Democrats succeeded in only one of three contests. In 1998 African Americans won two of three contests in which they represented the Democratic Party. White Democrats did approximately the same winning five of eight contests.

With regard to the African-American statewide candidate who lost in 1998, the nominee for Insurance Commissioner, not only did she have to run against a Republican incumbent, some questioned her credentials. African American Charles Walker who was at the time majority leader of the state Senate said that she "Did not have the support of the black community nor did she have a credible campaign. No one took her seriously… I mean she never - - she never even campaigned. She never even put signs up. She didn't do anything."[31]

When the figures are summed for the four most recent elections, Democrats won 14 times. Among African Americans, five of seven got elected for a success rate of 71 percent. Among whites, nine of 22 won for a success rate of 41 percent.

In sum, it appears that the politics of Georgia have undergone a dramatic transformation. In the post-trial brief filed before the three-judge panel that heard *Georgia v. Ashcroft*, the suit involving the state's 2001 redistricting plan that reduced black concentrations in a number of districts, Georgia's African American Attorney General Thurburt Baker asserted that:

> The State (sic) racial and political experience in recent years is radically different than it was 10 or 20 years ago, and that is exemplified on every level of politics from statewide elections on down. The election history for legislative offices in Georgia - - House, Senate and Congress - - reflect a high level of success by African American candidates.[32]

Table 1

Changes in Black Registration, 1962-2004, in Counties with Very Limited Black Registration in 1962 and Current Turnout Rates

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[31] Walker, *op. cit*., pp. 22-23.

[32] Post-trial brief of the state of Georgia, *Georgia v. Ashcroft* C.A. No. 01-2111 (EGS) (D.C., DC 2002), p. 2.

	Nonwhite Regis	1962 Registration %		2004 Black Registration		2004 General Election Turnout by %			
County	1960	Nonwhite	White	Female	Male	Black Fem	Black Male	White Fem	White Male
Baker	24	1.9	100 +	599	467	77	69	81	79
Bleckley	45	3.3	73.9	619	380	75	55	80	79
Burke	427	6.5	84.1	3,273	2,062	72	63	79	78
Calhoun	145	6	100+	955	675	68	59	76	76
Chattahoochee	17	0.9	4.2	555	479	60	49	65	55
Early	261	8	92.9	1632	1056	55	46	78	78
Echols	19	7.7	92.9	75	39	51	41	66	62
Fayette	26	2.2	77	4772	3691	88	82	88	85
Glascock	1	0.3	100+	53	42	74	62	82	85
Harris	263	8.5	100+	1324	1054	72	55	80	78
Houston	413	9.8	44	7,445	5,037	79	73	80	80
Jeff Davis	56	6.2	100+	597	402	64	55	70	70
Jefferson	283	5.9	82	2877	1885	72	55	81	79
Lee	29	1.6	84.8	956	778	76	64	82	79
Lincoln	3	0.2	100+	828	563	71	62	80	81
McDuffie	251	9.2	87.5	2064	1211	69	61	80	78
Madison	55	5.6	77	516	352	78	66	80	80
Marion	55	3.4	100+	796	566	74	60	76	72
Miller	6	0.6	100+	517	366	53	40	73	71
Mitchell	375	7.5	100+	2544	1612	69	57	80	79
Quitman	38	5.4	100+	414	266	64	55	68	66
Seminole	11	0.9	100+	847	543	57	48	72	71
Stewart	136	5.1	100+	1033	800	68	49	77	73
Sumter	548	8.2	73.5	4240	2793	68	55	80	80
Talbot	219	8.7	100+	1322	980	74	66	79	77
Terrell	98	2.4	96.6	1719	1070	69	56	83	82
Treutlen	45	4.6	100	687	461	71	60	76	73
Warren	188	8.4	85.8	1171	712	70	58	85	81
Webster	9	0.9	98.8	369	254	71	60	83	82
Worth	296	7.8	100+	1497	963	62	56	80	78

Table 2

REPORTED REGISTRATION BY RACE IN GEORGIA AND OUTSIDE THE SOUTH, 1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
Georgia													
Black	59.8	51.9	58	55.3	56.8	57	53.9	57.6	64.6	64.1	66.3	61.6	64.2
White	67	59.7	65.7	60.4	63.9	58.1	67.3	55	67.8	62	59.3	62.7	63.5
Non-South													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63	58.3	62	58.5	61.7	57	na
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63	na

Source: Various post-election reports by the U.S. Bureau of the Census.

Table 3

REPORTED TURNOUT BY RACE IN GEORGIA AND OUTSIDE THE SOUTH, 1980-2004

	1980	**1982**	**1984**	**1986**	**1988**	**1990**	**1992**	**1994**	**1996**	**1998**	**2000**	**2002**	**2004**
Georgia													
Black	43.7	32.5	45.9	37.3	42.4	42.3	47.1	30.9	45.6	40.2	51.6	38.5	54.4
White	56	40.7	55.3	40.5	53.2	42.6	58.7	38.3	52.3	36.8	48.3	44.8	53.6
Non-South													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	na
White	62.4	53.1	63	48.7	60.4	48.2	64.9	49.3	57.4	45.4	57.5	44.7	na

Source: Various post-election reports by the U.S. Bureau of the Census.

TABLE 4

OFFICIAL REGISTRATION AND TURNOUT IN GEORGIA, 1996 -2004

	Registration		Turnout		Turnout Percentage	
Year	Black	White	Black	White	Black	White
1996	929,525	2,822,012	497,086	1,814,983	53.5	64.3
1998	971,847	2,867,910	415,839	1,382,647	42.8	48.2
2000	980,033	2,792,479	615,723	1,993,493	62.8	71.4
2002	962,720	2,695,306	458,640	1,536,635	47.6	57.0
2004	1,155,706	2,917,322	834,331	2,344,632	72.2	80.4

Source: Georgia Secretary of State

TABLE 5

NUMBER OF AFRICAN-AMERICAN ELECTED OFFICIALS
IN GEORGIA, 1969-2001

Year	Total	County	Municipal	School Board
1969	30	4	8	3
1970	40	3	15	7
1971	51	6	20	8
1972	65	7	32	10
1973	104	9	42	28
1974	137	9	72	31
1975	168	12	89	36
1976	204	13	115	43
1977	225	18	132	41
1980	249	23	149	43
1981	266	23	151	55
1984	301	29	170	58
1985	340	58	179	57
1987	445	94	229	73
1989	483	102	242	81
1991	511	103	257	84
1993	545	105	266	95
1995				
1997	579	99	290	104
1999	584	93	302	99
2001	611	102	293	118

Source: Various volumes of *The National Roster of Black Elected Officials* (Washington, D.C.: Joint Center for Political and Economic Studies).

TABLE 6

RACIAL MAKE UP OF GEORGIA GENERAL ASSEMBLY, 1963-2005

	House			Senate		
	White	Black	%Black	White	Black	%Black
1963	205	0	0	53	1	1.9
1965	198	7	3.4	52	2	3.7
1967	196	9	4.4	52	2	3.7
1969	183	12	6.2	54	2	3.6
1971	182	13	6.7	54	2	3.6
1973	166	14	7.8	54	2	3.6
1975	161	19	10.6	54	2	3.6
1977	159	21	11.7	54	2	3.6
1979	159	21	11.7	54	2	3.6
1981	159	21	11.7	54	2	3.6
1983	159	21	11.7	52	4	7.1
1985	159	21	11.7	50	6	10.7
1987	156	24	13.3	50	6	10.7
1989	155	25	13.9	49	7	12.5
1991	153	27	15.0	48	8	14.3
1993	149	31	17.2	47	9	16.1
1995	148	32	17.8	46	10	17.9
1997	147	33	18.3	45	11	19.6
1999	147	33	18.3	44	11	19.6
2001	144	36	20.0	45	11	19.6
2003*	139	39	21.7	45	10	17.9
2005*	139	39	21.7	44	11	19.6

*The House has two Latino members and the Senate has one.

TABLE 7

AFRICAN AMERICANS SERVING IN CONGRESS FROM GEORGIA,
1973 – 2005

	Dist 5	Dist. 2	Dist. 11/Dist 4**	Dist.13
1973	Andrew Young (44%)			
1975	Andrew Young			
1977	Andrew Young *			
1979				
1981				
1983				
1985				
1987	John Lewis (65%)			
1989	John Lewis			
1991	John Lewis			
1993	John Lewis (62%)	Sanford Bishop (57%)	Cynthia McKinney (64%)	
1995	John Lewis	Sanford Bishop	Cynthia McKinney	
1997	John Lewis (62%)	Sanford Bishop (39%)	Cynthia McKinney (37%)	
1999	John Lewis	Sanford Bishop	Cynthia McKinney	
2001	John Lewis	Sanford Bishop	Cynthia McKinney	
2003	John Lewis (56%)	Sanford Bishop (45%)	Denise Majette (53%)	David Scott (41%)
2005	John Lewis	Sanford Bishop	Cynthia McKinney	David Scott

*Resigned to become US ambassador to the United Nations
**District renumbered from 11 to 4 with 1996 redistricting.

TABLE 8

CHANGE IN BLACK VOTING AGE POPULATION IN MAJORITY-BLACK DISTRICT PRODUCED BY THE FIRST 2001 SENATE PLAN

Senate	Population	Black Voting Age Population		BVAP
District	Deviation	2001 Plan	Previous Plan	Change
2	-3.12	50.31	60.30	-9.99
10	-4.96	64.14	70.30	-6.16
12	-4.15	50.66	55.30	-4.64
15	-4.67	50.87	61.60	-10.73
22	-4.85	51.51	63.10	-11.59
26	-4.39	50.80	62.30	-11.50
35	-1.76	60.69	75.60	-14.91
36	-4.73	56.94	60.00	-3.06
38	-4.76	60.29	76.30	-16.01
39	-4.98	56.54	54.40	2.14
43	-4.79	62.63	88.40	-25.77
55	-4.97	60.64	71.90	-11.26
Average		56.34	66.63	-10.29

TABLE 9

BLACK PERCENTAGE OF THE DEMOCRATIC PRIMARY TURNOUT, 1990 – 2004

Year	Total Primary Turnout	Democratic Turnout	Percent Black of Democratic Vote
1990	1,171,131	1,053,013	24.6
1992	1,151,971	875,149	22.1
1994	761,371	463,049	39.2
1996	1,182,168	717,302	22.5
1998	905,383	486,841	36.4
2000	960,414	613,884	31.3
2002	1,102,611	575,533	45.2
2004	1,418,838	731,111	47.2

Source: Georgia Secretary of state.

TABLE 10

RACIAL VOTING PATTERNS IN BLACK-WHITE
CONTESTS FOR GEORGIA'S 5TH CONGRESSIONAL DISTRICT

	Support for Black Candidate(s)	
	White Voters	Black Voters.
1970 Primary	23	99
1970 Runoff	32	100
1970 General	19	100
1972 Primary	39	100
1972 General	25	100
1974 General	55	100
1976 General	44	100
1977 Primary	5	98
1977 Runoff	4	96
1978 Primary	6	34
1982 General	10	31

TABLE 11

RACIAL VOTING PATTERNS IN GEORGIA CONGRESSIONAL CONTESTS INVOLVING AFRICAN-AMERICAN CANDIDATES, 1992 - 1998
(Percentages)

			WHITES				BLACKS			
	Race	Party	OLS	EI	HP	(N)	OLS	EI	HP	(N)
1992 Primaries										
Georgia District 2										
4 Candidates	B	D	26.3	32.3	35.1	(27)	88.7	83.9	80.7	(16)
2 Candidates	W	D	73.7	67.7	64.9		11.3	16.1	19.3	
Georgia District 11										
4 Candidates	B	D	56.5	61.7	63.0	(19)	92.1	89.9	87.2	(35)
Deloach	W	D	43.5	38.3	37.0		9.2	10.1	12.8	
1992 Runoffs										
Georgia District 2										
Bishop	B	D	17.5	30.4	28.7	(27)	85.5	76.6	74.9	(16)
Hatcher	W	D (I)	82.5	69.6	71.3		14.5	23.4	25.1	
Georgia District 11										
McKinney	B	D	21.2	35.0	23.4	(19)	97.7	86.3	88.5	(35)
DeLoach	W	D	78.8	65.0	76.6		2.3	13.7	11.5	
1992 General Election										
Georgia District 2										
Bishop	B	D	30.0	33.2	34.0	(26)	100	98.2	96.6	(16)
Dudley	W	R	70.0	66.8	66.0		0.0	1.8	3.4	
Georgia District 11										
McKinney	B	D	31.6	37.9	38.4	(18)	97.9	96.4	95.7	(n/a)
Lovett	W	R	68.4	62.1	61.6		2.1	3.6	4.3	
1994 General Election										
Georgia District 2										
Bishop	B	D(I)	40.4	42.7	38.1	(35)	99.5	94.7	95.9	(19)
Clayton	W	R	59.6	57.3	61.9		0.5	5.3	4.1	
Georgia District 11										
McKinney	B	D(I)	23.8	32.5	31.6	(23)	99.8	94.4	95.0	(42)
Lovett	W	R	76.2	67.5	68.4		0.2	5.6	5.0	

	Race	Party	WHITES OLS	EI	HP	(N)	BLACKS OLS	EI	HP	(N)
1996 Primary										
Georgia District 4										
McKinney	B	D(I)	21.3	24.9	27.7	(59)	92.3	92.7	94.8	(13)
3 Candidates	W	D	78.7	75.1	72.3		7.7	7.3	5.2	
Participation			11.6	11.7	15.1		30.6	30.2	30.8	
1996 General Election										
Georgia District 2										
Bishop	B	D(I)	37.4	37.7	36.6	(65)	100.0	97.1	98.2	(10)
Ealum	W	R	62.6	62.3	63.4		0.0	2.9	1.8	
Georgia District 4										
McKinney	B	D(I)	30.7	32.1	30.7	(59)	100.0	99.2	95.1	(14)
Mitnick	W	R	69.3	67.9	69.3		0.0	0.8	4.9	
1998 General Election										
Georgia District 2										
Bishop	B	D(I)	37.8	39.5	41.3	(75)	99.9	95.4	98.4	(10)
MCCormick	W	R	62.2	60.5	58.7		0.1	4.6	1.6	
Georgia District 4										
McKinney	B	D (I)	34.9	36.2	36.8	(58)	97.2	95.0	93.1	(23)
Warren	B	R	65.1	63.8	63.2		2.8	5.0	6.9	
Georgia District 5										
Lewis	B	D(I)	50.2	53.7	51.0	(36)	97.7	96.8	95.4	(100)
Lewis	B	R	49.8	46.3	49.0		2.3	3.2	4.6	
Georgia District 10										
Freeman	B	D	17.5	23.7	22.9	(66)	90.5	80.8	93.7	(13)
Norwood	W	R(I)	82.5	76.3	77.1		9.5	19.2	6.3	

OLS = ecological regression; EI = district - level estimates from King's (1997) method for ecological inference; HP = racially homogenous precincts. (I) = Incumbent; N = Number of racially homogeneous precincts; D = Democrat; R = Republican

TABLE 12

WHITE SUPPORT FOR WHITE GEORGIA DEMOCRATIC HOUSE CANDIDATES, 1992-1998
(Percentages)

	State	Dist.	Candidate	White Support OLS	EI	HP	(N)
1992							
Christmas	GA	1	OS	36.9	35.4	34.2	(126)
Ray	GA	3	I	41.2	40.7	38.5	(102)
Steinberg	GA	4	OS	45.1	47.1	44.8	(108)
Center	GA	6	C	39.2	41.2	40.9	(143)
Darden	GA	7	I	55.6	56.0	54.3	(132)
Rowland	GA	8	I	57.7	53.7	48.2	(121)
Johnson	GA	10	OS	52.3	51.7	48.5	(143)
1994							
Beckworth	GA	1	C	18.3	18.2	17.8	(147)
Overby	GA	3	C	30.0	31.1	29.0	(114)
Yates	GA	4	C	41.9	41.8	38.0	(112)
Jones	GA	6	C	35.2	36.0	35.3	(171)
Darden	GA	7	I	45.5	44.5	45.4	(135)
Mathis	GA	8	OS	34.9	34.4	30.5	(110)
Deal	GA	9	I	57.3	57.1	57.2	(227)
Johnson	GA	10	I	29.7	30.1	30.0	(160)
1996							
Kaszans	GA	1	C	15.9	19.2	20.9	(102)
Chafin	GA	3	C	25.0	30.9	27.3	(89)
Coles	GA	6	C	36.9	41.1	40.0	(166)
Watts	GA	7	C	38.5	37.4	41.0	(125)
Wiggins	GA	8	C	34.7	38.1	34.8	(91)
Poston	GA	9	C	34.0	33.5	34.6	(230)
Bell	GA	10	C	32.0	31.9	29.2	(71)
Stephenson	GA	11	C	33.2	33.5	34.7	(172)
1998							
Coles	GA	6	C	22.7	25.2	26.9	(181)
Williams	GA	7	C	38.5	37.5	41.4	(111)
Cain	GA	8	C	21.6	22.9	26.8	(99)
Littman	GA	11	C	26.2	28.5	28.7	(166)

Source: Charles S. Bullock, III, and Richard E. Dunn, AThe Demise of Racial Districting and the Future of Black Representation,@ *Emory Law Review* 48 (Fall): 1209 - 1253.
OLS = ecological regression; EI = district-level estimates from King=s (1997) method for ecological inference; HP = racially homogenous precincts; N = number of homogeneous white precincts; I = incumbent; OS = open seat candidate; C = challenger.

TABLE 13

SUCCESS OF DEMOCRATIC STATEWIDE CANDIDATES, 1998 - 2004

Office	Race of Democrat	Democrat's Vote	Democrat's %	Outcome
1998				
Senator	W	791,904	45.2	Lost
Governor	W	941,076	52.5	Won
Lieutenant Governor	W	990,496	56.4	Won
Secretary of State	W	983,905	56.6	Won
Attorney General	B	883,932	50.9	Won
Commr. Of Agriculture	W	1,085,694	62.8	Won
Commr. Of Insurance	B	651,891	37.7	Lost
School Supt.	W	794,324	46.0	Lost
Commissioner of Labor	B	894,656	52.7	Won
PSC (Hargis)	W	746,081	44.6	Lost
PSC (McDonald)	W	638,054	49.6	Won
2000				
President	W	1,116,230	43.2	Lost
Senator	W	1,413,224	58.2	Won
PSC (Burgess)	B	1,201,346	52.3	Won
PSC (Boyd)	W	928,005	41.0	Lost
2002				
Senator	W	931,857	45.9	Lost
Governor	W	937,062	46.3	Lost
Lieutenant Governor	W	1,041,227	51.9	Won
Secretary of State	W	1,225,232	61.1	Won
Attorney General	B	1,093,734	55.6	Won
Commr. Of Agriculture	W	1,138,705	57.4	Won
Commr of Insurance	W	657,754	33.2	Lost
School Supt.	W	859,653	43.0	Lost
Commissioner of Labor	B	1,007,468	51.2	Won
PSC (Sizemore)	W	913,119	47.5	Lost
PSC (McDonald)	W	911,669	47.1	Lost
2004				
President	W	1,366,149	41.4	Lost
Senator	B	1,287,690	40.0	Lost
PSC (Barber)	W	1,217,443	39.5	Lost

TABLE 14

Senate	Population	Black Voting Age Population		BVAP	Black Registration	
District	Deviation	2001 Plan	Exiting Plan	Change	2001 Plan	Existing Plan
2	-3.12	50.31	60.30	-9.99	48.42	62.38
10	-4.96	64.14	70.30	-6.16	63.06	69.81
12	-4.15	50.66	55.30	-4.64	47.46	52.48
15	-4.67	50.87	61.60	-10.73	50.25	72.69
22	-4.85	51.51	63.10	-11.59	49.44	64.07
26	-4.39	50.80	62.30	-11.50	48.27	62.79
35	-1.76	60.69	75.60	-14.91	64.73	81.00
36	-4.73	56.94	60.00	-3.06	58.65	61.39
38	-4.76	60.29	76.30	-16.01	60.38	75.33
39	-4.98	56.54	54.40	2.14	59.79	59.46
43	-4.79	62.63	88.40	-25.77	63.11	89.14
55	-4.97	60.64	71.90	-11.26	60.99	73.07
Average		56.34	66.63	-10.29		